

CA2ALQG
50H2Q
Dec 10/51
Vol 30



The Province of Alberta

PETROLEUM AND NATURAL GAS CONSERVATION BOARD

IN THE MATTER OF THE GAS RESOURCES PRESERVATION ACT

AND IN THE MATTER of a Joint Hearing to determine various questions
relating to the proposed Export of Natural Gas from the Province of Alberta.

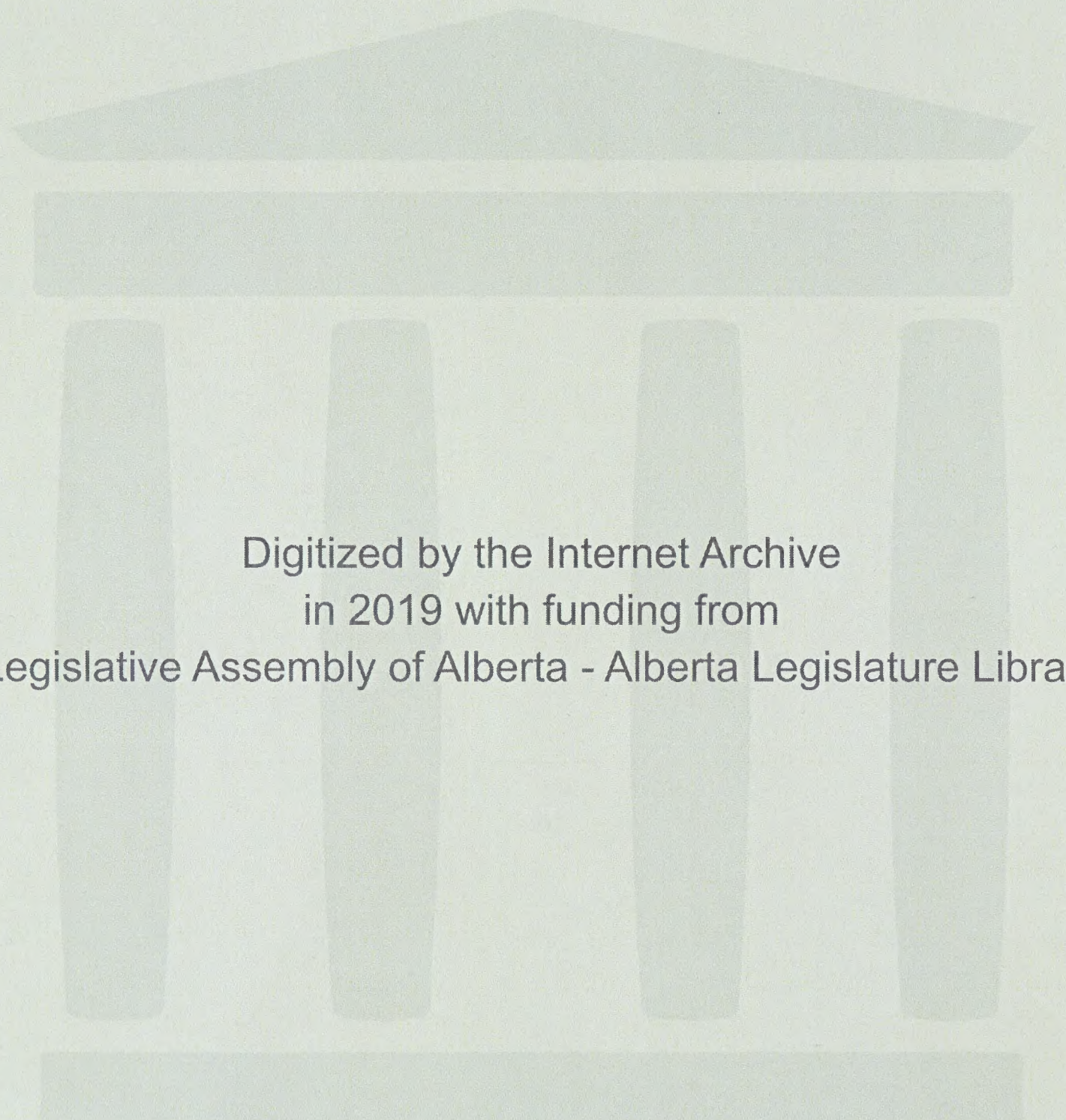
I. N. McKinnon Esq., Chairman

D. P. Goodall Esq.

Dr. G. W. Govier

Session: December 10th, 1951.

Volume 30.



Digitized by the Internet Archive
in 2019 with funding from
Legislative Assembly of Alberta - Alberta Legislature Library

I N D E X

VOLUME 30

10 December 1951

W I T N E S S E S

Page

WILLIAM C. KEEFE

Direct Examination by Mr. S.B. Smith,....	2735
Cross-Examination by Mr. Nolan,.....	2740
Cross-Examination by Mr. Martland,.....	2742
Cross-Examination by Mr. McDonald,.....	2744
Cross-Examination by Mr. Porter,.....	2747
Examination by Mr. C.E. Smith,.....	2759
Re-Examination by Mr. S.B. Smith,.....	2761

BINFORD ARNEY

Direct Examination by Mr. S.B. Smith,....	2762
Cross-Examination by Mr. Nolan,.....	2780
Cross-Examination by Mr. McDonald,.....	2790
Cross-Examination by Mr. Martland,.....	2804
Cross-Examination by Mr. Porter,.....	2807
Cross-Examination by Mr. Bredin,.....	2829
Examination by Mr. C.E. Smith,.....	2832
Re-Examination by Mr. S.B. Smith,.....	2834
Cross-Examination by Mr. Porter,.....	2835

FRANCIS KERNAN

Direct Examination by Mr. S.B. Smith,....	2835
Cross-Examination by Mr. Porter,.....	2842
Cross-Examination by Mr. Nolan,.....	2844
Cross-Examination by Mr. Martland,.....	2846
Cross-Examination by Mr. McDonald,.....	2846

E X H I B I T S

No.

101	Opinion No. 214,.....	2758
102	Opinion No. 218,.....	2758

Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.

- 2735 -

VOLUME 30.

December 10, 1951.

MR. S. B. SMITH: I would like to proceed this morning, sir.

THE CHAIRMAN: Yes.

MR. S. B. SMITH: I will call Mr. C. Keefe.

WILLIAM C. KEEFE, having been first duly sworn, examined by Mr. S. B. Smith, testified as follows:-

Q Mr. Keefe, you live in New York?

A Yes, my address is 120 Broadway, New York.

Q And you are, I believe, a graduate of Harvard University in law?

A That is correct.

Q What year?

A 1938.

Q And you are also a graduate of Notre Dame?

A That is right, 1935.

Q Now, following your graduation in law, did you practice law?

A I practiced law in the City of New York a number of years, and since, for that last two years, I have been with Panhandle Eastern Pipe Line Company in New York as Assistant General Attorney.

Q And you are now Assistant General Attorney of that company?

A I am, and I am also engaged in sales work for the company and the Vice-President in charge of sales.

Q Mr. Keefe, how do you happen to be in Calgary here today?

A I was instructed to come to Calgary by the Chairman and

Wm. C. Keefe
Dir. Ex. by Mr. S. B. Smith.

- 2735 -

VOLUME 30.

December 10, 1931.

MR. S. B. SMITH: I would like to proceed this

morning, sir.

THE CHAIRMAN:

Yes.

MR. S. B. SMITH: I will call Mr. C. Keefe.

WILLIAM C. KEEFE, having been

first duly sworn, examined by Mr. S. B. Smith, testified as

follows:-

Q Mr. Keefe, you live in New York?

A Yes, my address is 120 Broadway, New York.

Q And you are, I believe, a graduate of Harvard University

in law?

A That is correct.

Q What year?

A 1938.

Q And you are also a graduate of Notre Dame?

A That is right, 1935.

Q Now, following your graduation in law, did you practice law?

A I practiced law in the City of New York a number of years,

and since, for that last two years, I have been with Panhandle

Eastern Pipe Line Company in New York as Assistant General

Attorney.

Q And you are now Assistant General Attorney of that company?

A I am, and I am also engaged in sales work for the company

and the Vice-President in charge of sales.

Q Mr. Keefe, how do you happen to be in California here today?

A I was instructed to come to California by the Chairman and

Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.

- 2736 -

the President of Panhandle Eastern.

Q That is?

A Mr. W. G. Maguire and Mr. E. Buddrus.

Q We have here as exhibit 95, Mr. Keefe, a letter signed by Mr. Buddress on the letterhead of the Panhandle Eastern Pipe Line Company. Are you familiar with that?

A Yes, I am.

Q I would like to ask you this, Mr. Keefe, are the arrangements proposed in exhibit 95 desirable from the point of view of Panhandle Eastern Pipe Line Company?

A Yes, they are.

Q And I ask you this, is Panhandle Eastern Pipe Line Company prepared to go through with the arrangements set forth in exhibit 95?

A Yes, they are.

Q Has Panhandle Eastern Pipe Line Company the gas reserves required to go through with the arrangements proposed in exhibit 95?

A It is contemplated that the gas, 250 million feet of gas, will be obtained in part from Trunkline Gas Company, and in part from the Panhandle system itself. Panhandle has, or, rather, Trunkline has the reserves, they have an additional gas reserve for an additional 125 million feet of gas. Panhandle itself has a substantial part of the reserves necessary to deliver 125 million feet of gas per day. And it would be expected that the balance of the reserves could be acquired without too great difficulty.

Q Can you tell us approximately what the gas reserves of Panhandle Eastern Pipe Line Company are at the present time?

Mr. C. Keefe
Mr. B. B. Smith

the President of Panhandle Eastern.

Q That is?

A Mr. W. G. Mearns and Mr. E. E. Budrys.

Q We have here as exhibit 92, Mr. Keefe, a letter signed by

Mr. Budrys on the letterhead of the Panhandle Eastern Pipe

Line Company. Are you familiar with that?

A Yes, I am.

Q I would like to ask you this, Mr. Keefe, are the arrangements

proposed in exhibit 92 desirable from the point of view of

Panhandle Eastern Pipe Line Company?

A Yes, they are.

Q And I ask you this, is Panhandle Eastern Pipe Line Company

prepared to go through with the arrangements set forth in

exhibit 92?

A Yes, they are.

Q Has Panhandle Eastern Pipe Line Company the gas reserves

required to go through with the arrangements proposed in

exhibit 92?

A It is contemplated that the gas, 250 million feet of gas,

will be obtained in part from Trunkline Gas Company, and in

part from the Panhandle system itself. Panhandle has, or,

rather, Trunkline has the reserves, they have an additional

gas reserve for an additional 125 million feet of gas. Pan-

handle itself has a substantial part of the reserves nec-

essary to deliver 125 million feet of gas per day. And it

would be expected that the balance of the reserves could be

acquired without too great difficulty.

Q Can you tell us approximately what the gas reserves of Pan-

handle Eastern Pipe Line Company are at the present time?

Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.

- 2737 -

- A The Panhandle system's gas reserves are somewhere between 7 and 8 trillion. I cannot give you the exact figure.
- Q Are they owned outright by Panhandle or under what sort of ownership?
- A A part of them owned by Panhandle, I think approximately 30% are owned by Panhandle, and the others are purchased through gas contracts.
- Q Now, Mr. Keefe, I wonder if you could tell us briefly what Panhandle Eastern Pipe Line Company is, and give us a general description of its system of pipe lines, what it does and how it functions? Perhaps you would start back when it was organized and carry us forward?
- A It is one of the older pipe line systems in the United States. It was organized in 1930, began delivering gas in 1931, and its present system consists of two loop pipe lines from the, two completely looped pipe lines from the Panhandle of Texas to Michigan, with a portion of the system going up into northern Michigan. In addition, there is a third line that is partially constructed, all but, I think, about 250 miles of the third line of a loop line have been built, and then in addition the Trunkline system from the Gulf Coast of Texas to Central Illinois, where it meets the Panhandle system, and those deliveries of gas are delivered east to territories served by the Panhandle system.
- Q I believe there is a map, Mr. Keefe, exhibit 94. Does that map show the system?
- A I believe it does show the Panhandle system and the Trunkline system. I do not believe it shows the looping of the lines, but it shows the route which the pipe line travels.

Mr. C. Keefe
Mr. E. B. Smith

A The Panhandle system's gas reserves are somewhere between 7 and 8 trillion. I cannot give you the exact figure.

Q Are they owned outright by Panhandle or under what sort of ownership?

A A part of them owned by Panhandle, I think approximately 30% are owned by Panhandle, and the others are purchased through gas contracts.

Q Now, Mr. Keefe, I wonder if you could tell us briefly what Panhandle Eastern Pipe Line Company is, and give us a general description of its system of pipe lines, what it does and how it functions? Perhaps you would start back when it was organized and carry us forward?

A It is one of the other pipe line systems in the United States. It was organized in 1930, began delivering gas in 1931, and its present system consists of two main lines from the lines from the two completely looped pipe lines from the Panhandle of Texas to Michigan, with a portion of the system going up into northern Michigan. In addition, there is a third line that is partially constructed, all but I think about 250 miles of the third line of a loop line have been built, and then in addition the Trans-Mississippi system from the Gulf Coast of Texas to Central Illinois, where it meets the Panhandle system, and those deliveries of gas are delivered east to territories served by the Panhandle system.

Q I believe there is a map, Mr. Keefe, exhibit 94. Does that map show the system?

A I believe it does show the Panhandle system and the Trans-Mississippi system. I do not believe it shows the looping of the lines, but it shows the route which the pipe line travels.

Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.

- 2738 -

Q The Trunkline that you have referred to is the branch, perhaps you could call it, which goes down to the Gulf Coast area?

A That is correct.

Q And the remainder of the system is what you describe as the Panhandle system?

A The Panhandle system.

Q So that you have two systems which are really all part of the one system?

A That is right.

Q But particularly you describe the main line as the Panhandle system and your branch down to the Gulf area as the Trunkline system?

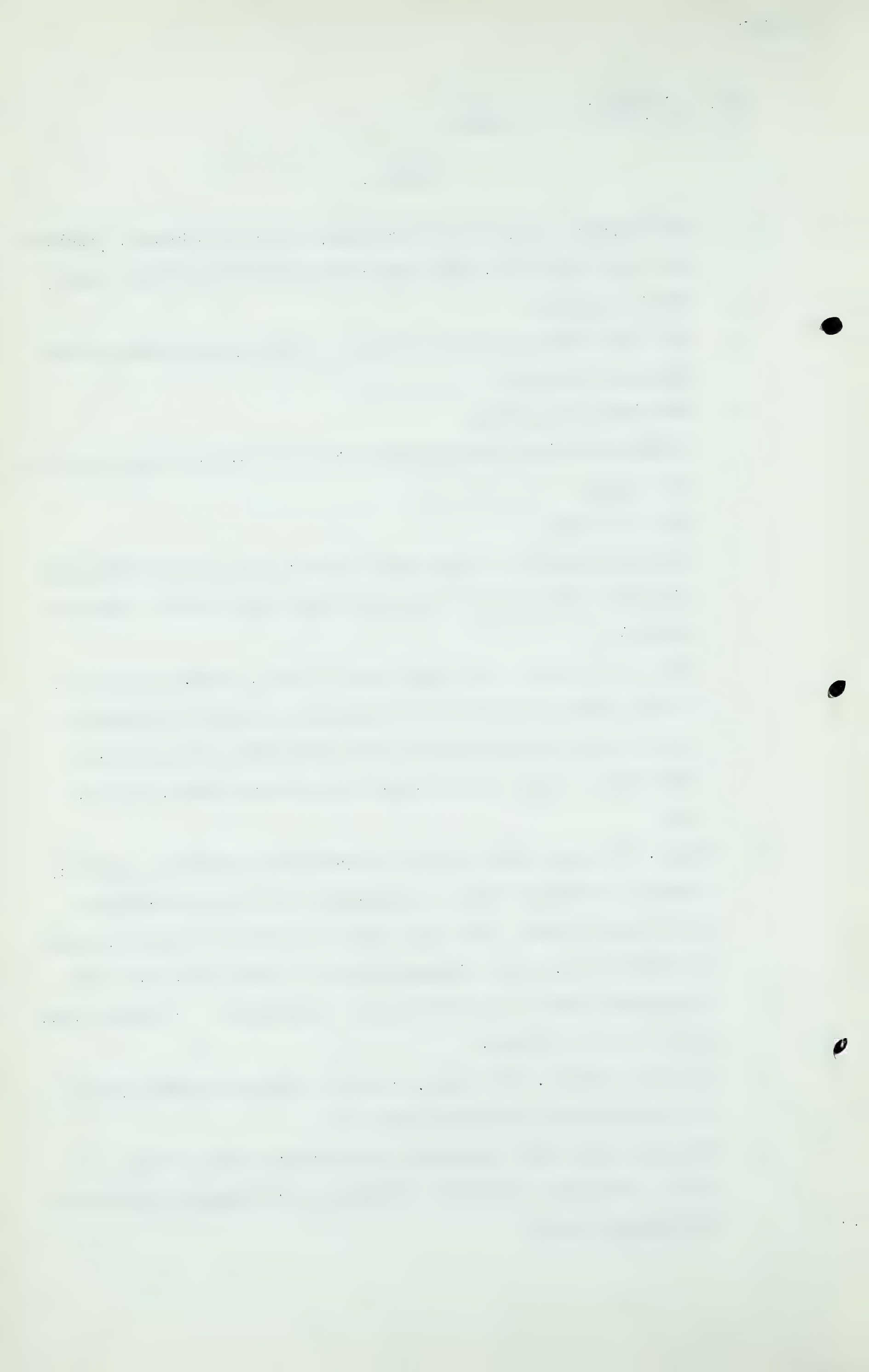
A That is correct. The Trunkline, 96 and a fraction per cent of the common stock of the Trunkline is owned by Panhandle.

Q Can you tell me approximately how many miles of pipe line there are in this system which you have been describing to us?

A Well, there are 1200 miles, the Panhandle system is approximately 1200 miles from the Panhandle of Texas to Michigan, and there are two, as I said before, there are two loop lines of 1200 miles, and a thousand miles of third loop, and the Trunkline system is approximately 1200 miles. I am not sure of the exact mileage.

Q Can you tell us, Mr. Keefe, what the designed sales capacity of the Panhandle Eastern system is?

A The designed sales capacity is 850 million feet of gas per day. Those are the actual deliveries of Panhandle system at the present time.



Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.

- 2739 -

Q They are actually operating at that figure?

A They are actually operating at that capacity.

Q What additional facilities would Panhandle Eastern require to enable that company to deliver 250 million cubic feet per day at Windsor, pursuant to exhibit 95?

A It would require on the Panhandle system approximately 250 miles of 30-inch pipe line. That would amount to approximately 50,000 tons of steel.

Q Yes?

A In addition there would be some, there would have to be additional horsepower installed on the Panhandle system. I am not sure of the exact amount. I think it is in the nature of 15,000 horsepower.

Q On the Panhandle system?

A On the Panhandle system.

Q Yes?

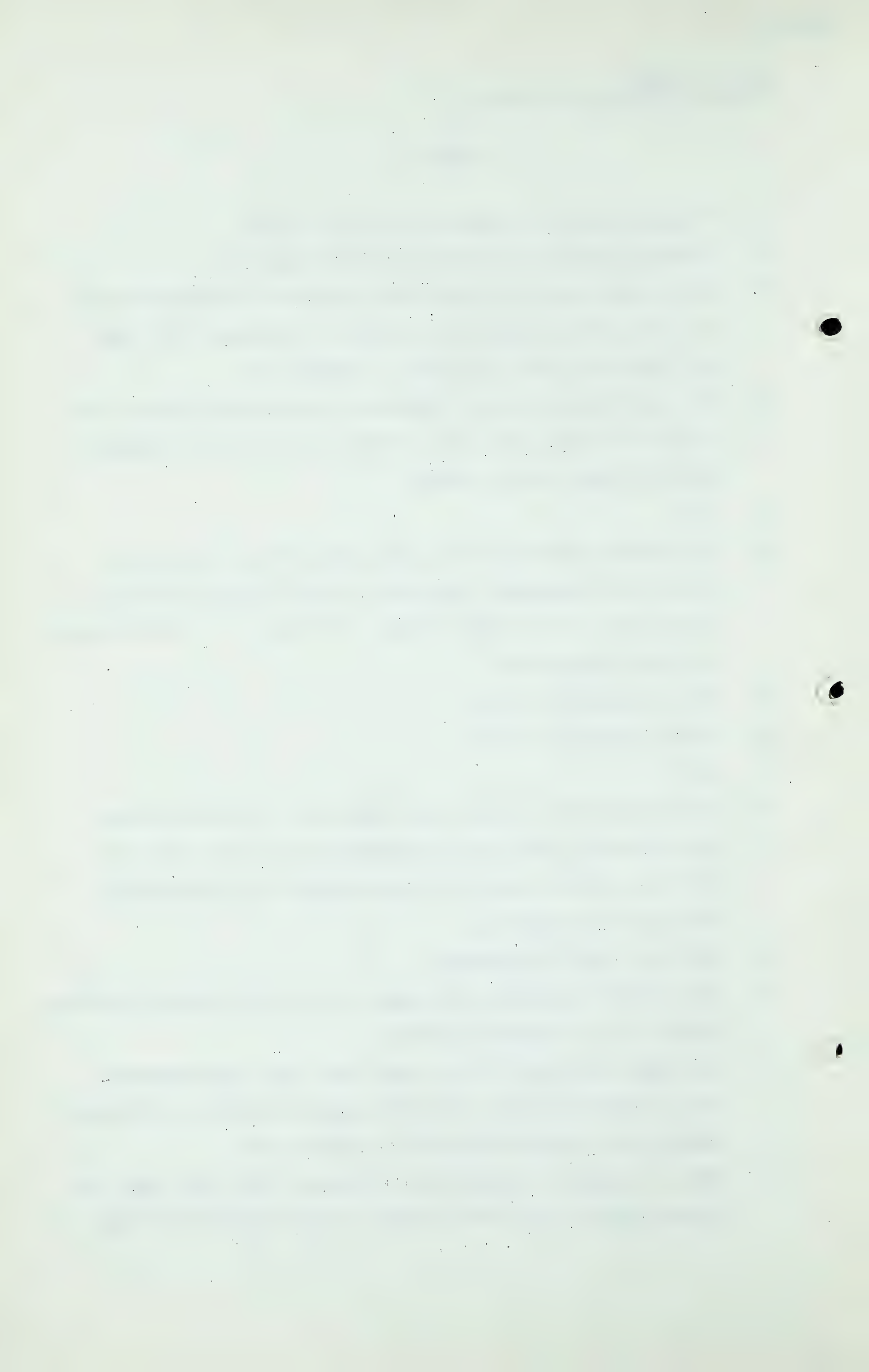
A On the Trunkline system there would not be any additional pipe line, but additional horsepower would have to be installed, and that would be approximately the same amount that would be required.

Q That is, 15,000 horsepower?

A Yes, 15,000 horsepower, the same as would be required approximately on the Panhandle system.

Q Mr. Keefe, can you tell us about what price the Panhandle would charge for gas at the International Border, at Windsor, Ontario, for delivery, pursuant to exhibit 95?

A Well, it would be impossible to state at this time what the actual price of gas will be, but I would believe that Pan-



Wm. C. Keefe,
Dir. Ex. by Mr. S. B. Smith.
Cr. Ex. by Mr. Nolan.

- 2740 -

handle contemplates a price of $33\frac{1}{2}$ cents per Mcf at Windsor,
or at the International line.

Q Would you answer my learned friends, Mr. Keefe?

A Pardon?

Q Would you answer other counsel?

A Oh, yes, sure.

CROSS-EXAMINATION BY MR. NOLAN:

Q I wanted to ask Mr. Keefe something pertaining to exhibit 85.

MR. S. B. SMITH: 85?

MR. NOLAN: 95.

Q I understand, Mr. Keefe, that you are appearing here today
as an expert in legal matters?

A I am appearing here on behalf of -- no, I am appearing here
to testify to Panhandle's position generally in this matter.

MR. S. B. SMITH: I did not call him as a legal
expert, Mr. Nolan.

MR. NOLAN: I thought you were going to
call one?

MR. SMITH: I am.

MR. NOLAN: Oh, perhaps I should leave
such matters as treaties to the legal expert, should I?

MR. SMITH: Whatever you like.

Q MR. NOLAN: Perhaps you could tell me
about it, Mr. Keefe?

MR. S. B. SMITH: I am calling Mr. Arney from
Texas as the next witness.

Q MR. NOLAN: Exhibit 95, Mr. Keefe, and
that is the project that you say Panhandle is prepared to

Wm. C. Keefe,
Cr. Ex. by Mr. Nolan.

- 2741 -

go on with?

A That is correct.

Q And I notice that the proposal, Mr. Keefe, is subject to certain conditions, the first being that an acceptable treaty be worked out between the United States and the Canadian Government, permitting such transportation and sale of gas for a period of not less than 20 years, and so I take it from that that this project, so far as Panhandle Eastern is concerned, is dependent upon that acceptable treaty being brought into being?

A That is correct.

Q When was the last treaty made between Canada and the United States?

A I am not aware of that, sir.

Q Are you aware that there have been some discussions about the St. Lawrence Waterway project?

A I am, sir.

Q Has there been any concluded treaty with respect to that?

A I am not aware of it, sir.

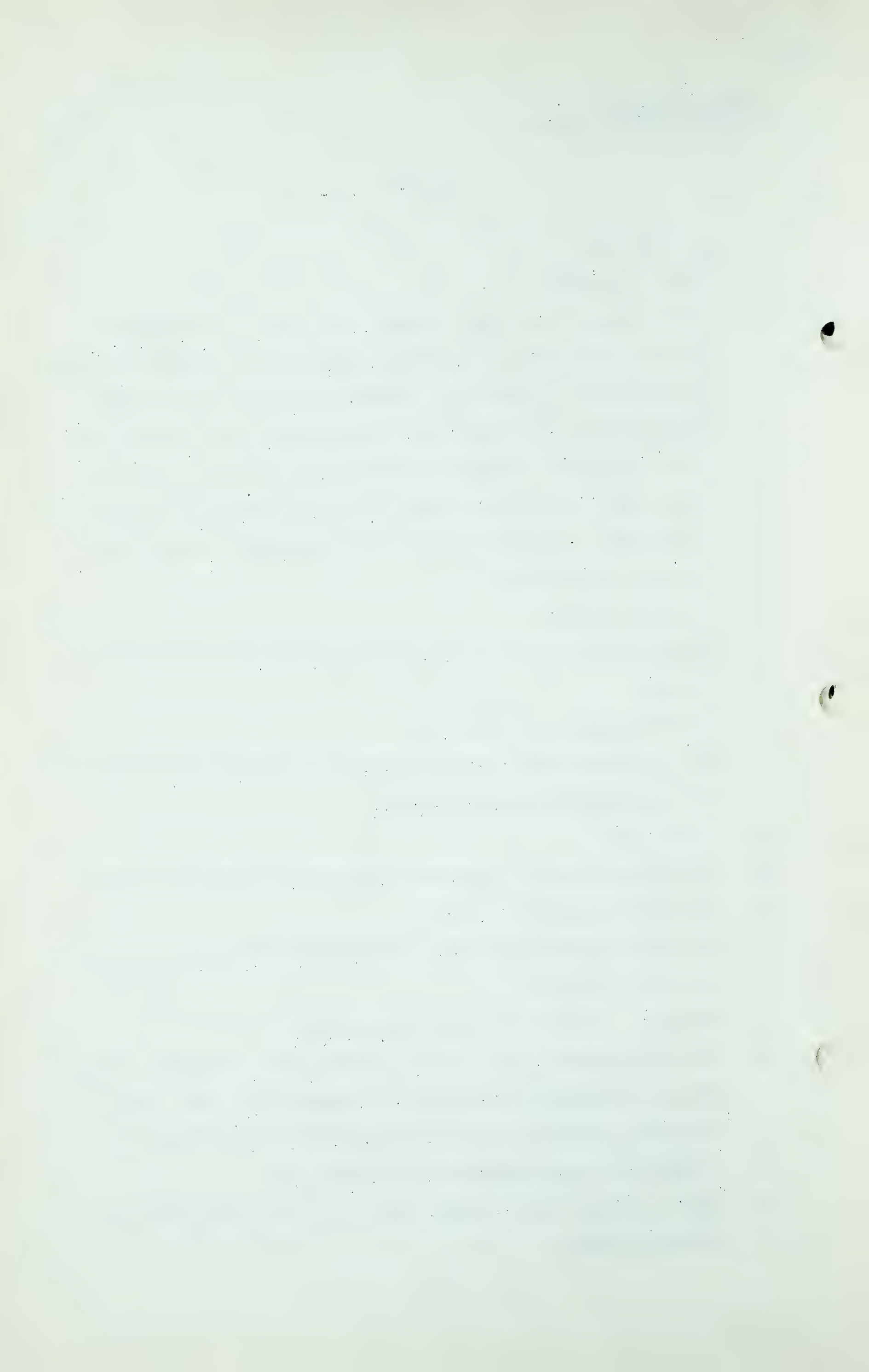
Q Do you know that the House of Representatives is in favour of that project?

A Pardon? Will you repeat that, please?

Q My understanding, Mr. Keefe, is that both the Senate and the House of Representatives are in favour of it, but that it lacks the necessary two-thirds majority in the Senate?

A I would not know anything about that, sir.

Q Well, perhaps I had better reserve my questions for the other witness.



Wm. C. Keefe,
Cr. Ex. by Mr. Martland.

- 2742 -

CROSS-EXAMINATION BY MR. MARTLAND:

Q Mr. Keefe, the Panhandle Company has in existence certain contracts with Union Gas Company of Canada?

A That is correct.

Q Is there one contract or are there more?

A Well, there have been more than one. The first contract, I believe, was entered into in 1945. There was a subsequent contract in 1950.

Q And, generally, what were the provisions of those contracts as to quantities of gas to be delivered?

A I do not know what the volume was in the first agreement. I do know that Panhandle received an export, a Presidential permit and an export certificate to export 5 million, no, 5 billion 500 million feet of gas during a 7-month period of each year.

Q And that . . .

A All right, go ahead.

Q You go ahead. That was a limitation which was not contained in the contract itself?

A As I say, I do not know what the exact volume was. I think it might have been as much as 3 billion more a year. I am not certain.

Q The conditions which were attached by the Federal Power Commission on their permit were not contained in the original contract?

A I think that is correct. They imposed, I think the 7-month provision was imposed. I am not too familiar with the original contract.

Q And the Federal Power Commission, by imposing terms, can, in

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

Wm. C. Keefe,
Cr. Ex. by Mr. Martland.

- 2743 -

fact, interfere with contractual provisions as to gas deliveries?

A Well, it has.

Q It has done so?

A Yes.

Q And effectively done so?

A Well, let us just say it has.

Q Actually, there never has been $5\frac{1}{2}$ billion cubic feet per year delivered into Canada under that contract, has there?

A That is correct. The reason for that has been that Union Gas has never been able to take that much gas during the 7-month period.

Q What is the largest amount that has ever been delivered in a year?

A Well, I am not certain of the volume in 1951. I know the volume in 1950 was approximately 3 billion cubic feet. It was very close to 3 billion feet. I think that in 1951 there was, perhaps, as much as, say, a half a billion feet in excess of that figure, but I am not certain of the exact amount.

Q And in the years prior to 1950, the amount of gas could be described as a mere trickle, isn't that so?

A I think prior to 1949, yes.

Q Yes?

A I do not know. Again, I do not know the exact volume in 1949. In 1947, I believe, the Michigan Gas Storage Company fields were being re-activated and re-pressured, and it was necessary that all gas go to develop those storage fields, and that was the reason that there was very little gas delivered to Union Gas of Canada.

Q So that in those years the reason there was very little

Wm. C. Keefe,
Cr. Ex. by Mr. Martland.
Cr. Ex. by Mr. McDonald.

- 2744 -

delivered was that it was being used in the United States?

A It was being used for a special purpose, such as the re-pressuring of the storage fields.

Q In the United States?

A Yes.

Q Thank you.

CROSS-EXAMINATION BY MR. McDONALD:

Q Mr. Keefe, if I understand your evidence, or understood your evidence given a moment ago, with regard to the reserves of the Panhandle Company . . .

A Yes.

Q . . . did I understand the reserves are 7 to 8 trillion cubic feet?

A That is correct. I am not sure of the exact figure, but it is in that neighbourhood.

Q Now, are these reserves owned by the Panhandle Company or are they reserves that are dedicated to the system?

A The reserves, a portion of the reserves, as I said, are owned by the Panhandle Company, that is, about 30%, I understand.

Q Yes?

A And the balance are through purchase contracts.

Q Yes. And, as I say, they are what I would call generally dedicated to that particular system?

A No, they are not dedicated to anyone.

Q They are not dedicated to anyone?

A No.

William C. Keefe,
Cr. Ex. by Mr. McDonald.

- 2745 -

Q They are covered by the contract that you have?

A Not covered by any contract.

Q That is the Panhandle Eastern operation?

A Well, the Panhandle or Trunkline, no dedication of any of Panhandle's gas reserves, to my knowledge.

Q In other words --

A They are just there.

Q They are just there. It is reserves that your two companies have under contract?

A That is right.

Q And you are delivering gas to markets that you presently have?

A Pardon?

Q You are delivering your gas to markets that you presently have?

A That is right.

Q As I understand it, the present system has delivery capacity of 850 million cubic feet per day?

A That is correct.

Q And I think you indicated that it has actually handled that much gas in a day?

A It does every day.

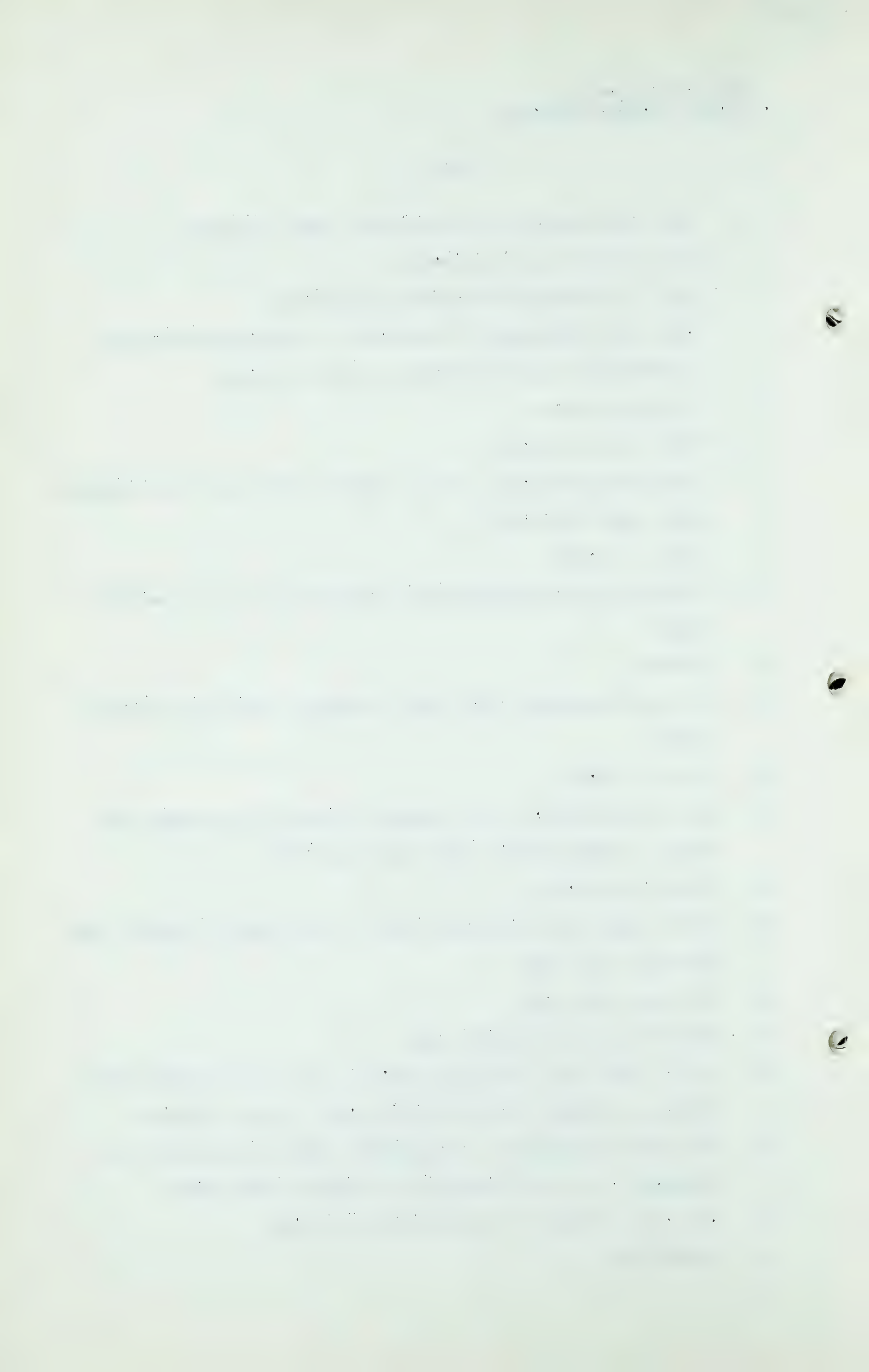
Q What is the load factor now?

A It is very close to 100 per cent. I do not know the exact figure, between 90 and 100 per cent, I would believe.

Q So that for practical purposes the delivery capacity is reached, oh, on an average of a third of the time?

A Oh, no. I think it is reached every day.

Q Every day?



William C. Keefe,
Cr. Ex. by Mr. McDonald.

- 2746 -

A Yes.

Q That is for your present market that you are presently serving?

A Yes.

MR. S.B. SMITH: Talking about the present delivery capacity?

MR. McDONALD: Yes, present delivery capacity.

Q What I was trying to figure out was this, 850 million feet per day works out to 3 trillion cubic feet per year?

A I haven't figured that, sir.

Q You haven't figured it?

A I have not.

Q Just assume with me that is for 365 days, multiplying it by 10 years, it is 6.2 trillion, multiplied by 30, it is 9.3 trillion cubic feet as contrasted against your reserve as you presently have under contract of 7 to 8 trillion.

A First, let me state I am not intending to be an expert on Panhandle's gas reserves, but there is, and I do not think that anyone in the industry has ever saw fit to question Panhandle's gas reserves, or the Federal Power Commission. If they have I have not heard about it. As I say, it will be necessary for Panhandle to get some more gas to sell. I do not know enough about it to tell you how much. I do not think it is a substantial item and I do not think it is going to be impossible to get.

Q I am just interested in the mere mechanics of your present position. Could you tell me, the 7 to 8 trillion feet that you mentioned in reserves, is that deliverable gas or gas in the ground?

William C. Keefe,
Cr. Ex. by Mr. McDonald.
Cr. Ex. by Mr. Porter.

- 2747 -

A I can not tell you that, sir. I know we have been able to deliver, since the Trunkline system has been installed, over 850 million feet per day.

Q I am just interested in the length of life that you have on your line, measured by reserves against annual consumption. You have told me all that you would take?

A Yes.

CROSS-EXAMINATION BY MR. PORTER:

Q Mr. Keefe, I suppose Panhandle functions as a utility and gets for its gas --

A I do not think that is so.

Q It is not a utility?

A No. We are not a utility, a natural gas company.

Q But you are subject to the utility features of the Federal Power Commission structure?

A We are subject to the Natural Gas Act, yes.

Q Well, I am sorry I did not put it properly. And in selling gas you get what it will sell for competitively?

A Our rates are regulated by the Federal Power Commission, our rates for re-sale.

Q And you get as much as they will let you take?

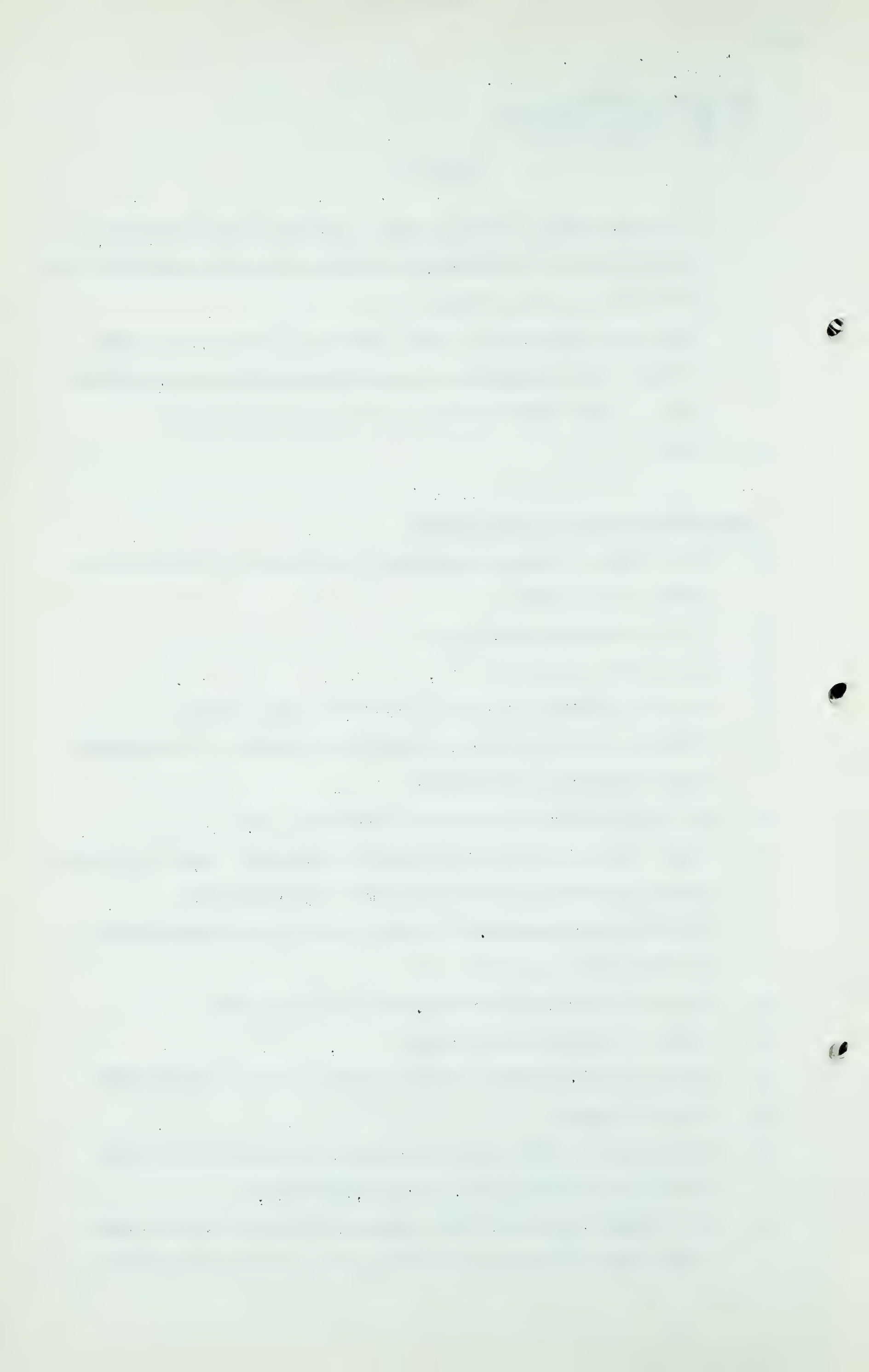
A That is correct, not enough.

Q That is the function of the company, it runs for profit?

A That is right.

Q Now, when you sell gas outside of the United States, is the price of that gas or its transmission --

A If I might interrupt you, perhaps, in that, direct industrial sales in the United States are not subject to the



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2748 -

Federal Power Commission regulations, they are subject in certain instances to individual States' regulations.

Q Now, when you sell gas outside of the United States, is there any body in the United States that regulates the price of that gas or the charge for its transmission?

A Not that I know of, sir.

Q So that this gas which you contemplate selling in Ontario would be completely unregulated, both as to price and as to transmission charges?

A That is correct.

Q Now, as a business concern, when you get that gas to Ontario, assuming you have a permit, do you contemplate selling that for less than its competitive value with other fuels?

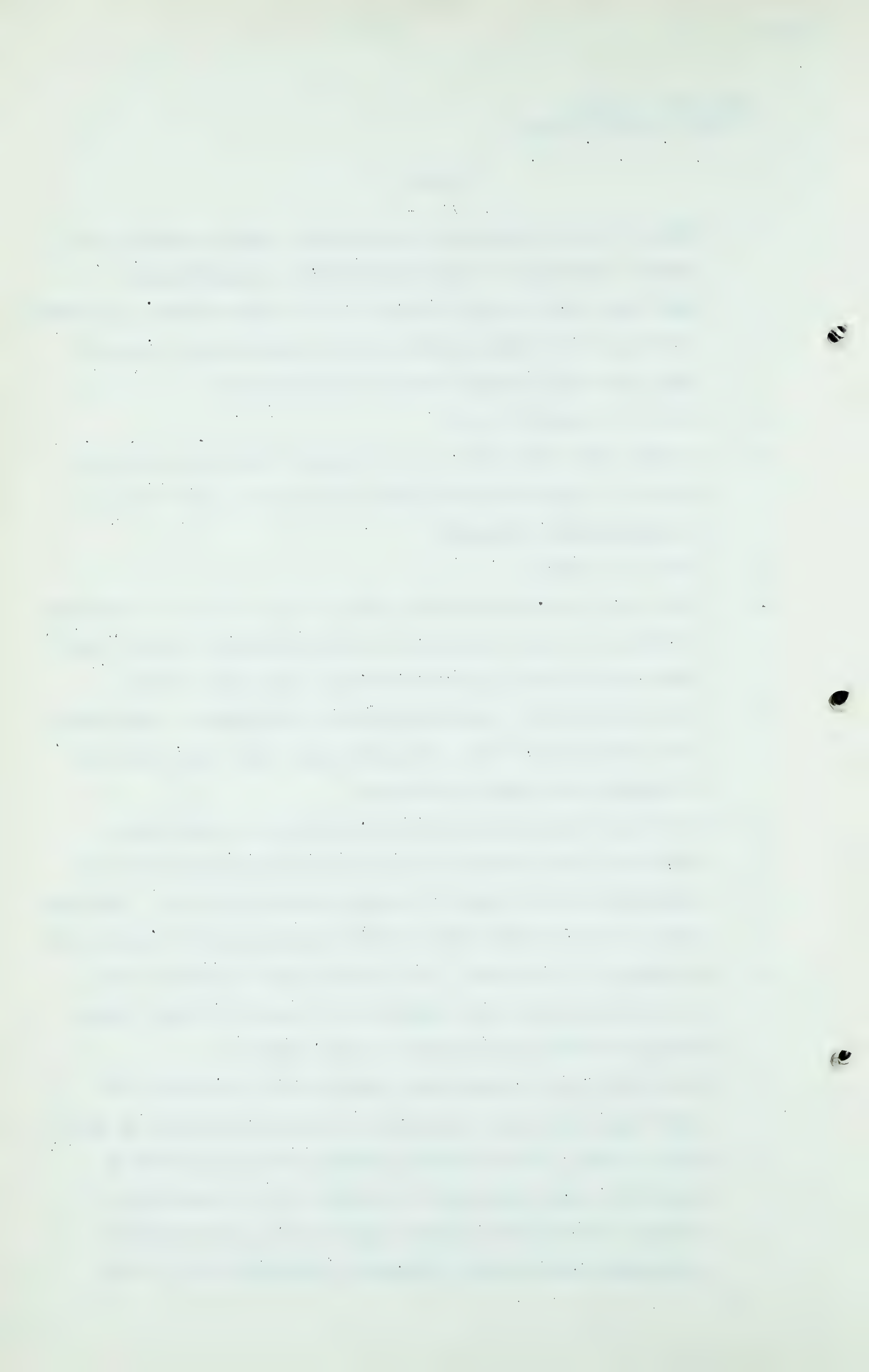
A As I said before, the price that we contemplated, 33½ cents, I am certain that that is a great deal less than the price of competitive fuels in Windsor.

Q Now, I am interested in the motive which a corporation functioning for profit has in selling something below its competitive value when it is not required to do so. On what basis do you justify that to your shareholders or directors?

A Let me put it this way. We consider gas a superior fuel but we do not make it a practice to, should we say, charge what the traffic will bear in every instance.

Q You do not get it regulated, here you are, free now, is there any reason why you should not make some money up here?

A First of all, let me say the question of price is not a question I have anything to do with. It is a question of policy. Mr. Maguire and Mr. Buttruss are quite capable people and have and will determine those matters in the



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2749 -

future. I do not see how I can answer your question from any standpoint because I am not a policy witness, I have nothing to do with fixing the policy of price.

Q I see. Now, are you familiar with some recent hearings before the Federal Power Commission which resulted in an opinion called "Opinion 214" between the Panhandle Eastern Pipeline, the City of Port Huron, the City of Marysville and some other parties?

A Yes, I am.

MR. C.E. SMITH: Have you got a reference for that, Mr. Porter?

MR. PORTER: I think I will file them as exhibits. I would like to go over a portion of them.

Q Now, as I understand it, the Natural Gas Act contains two sections, I do not have it with me, one which determines the basis on which gas shall be delivered within the United States and another which determines how you go about exporting gas from the United States. I think they are Sections 3 and 7?

A That is correct.

Q And they were both being considered in this application which resulted in Opinion 214?

A Yes. Would you let me see it?

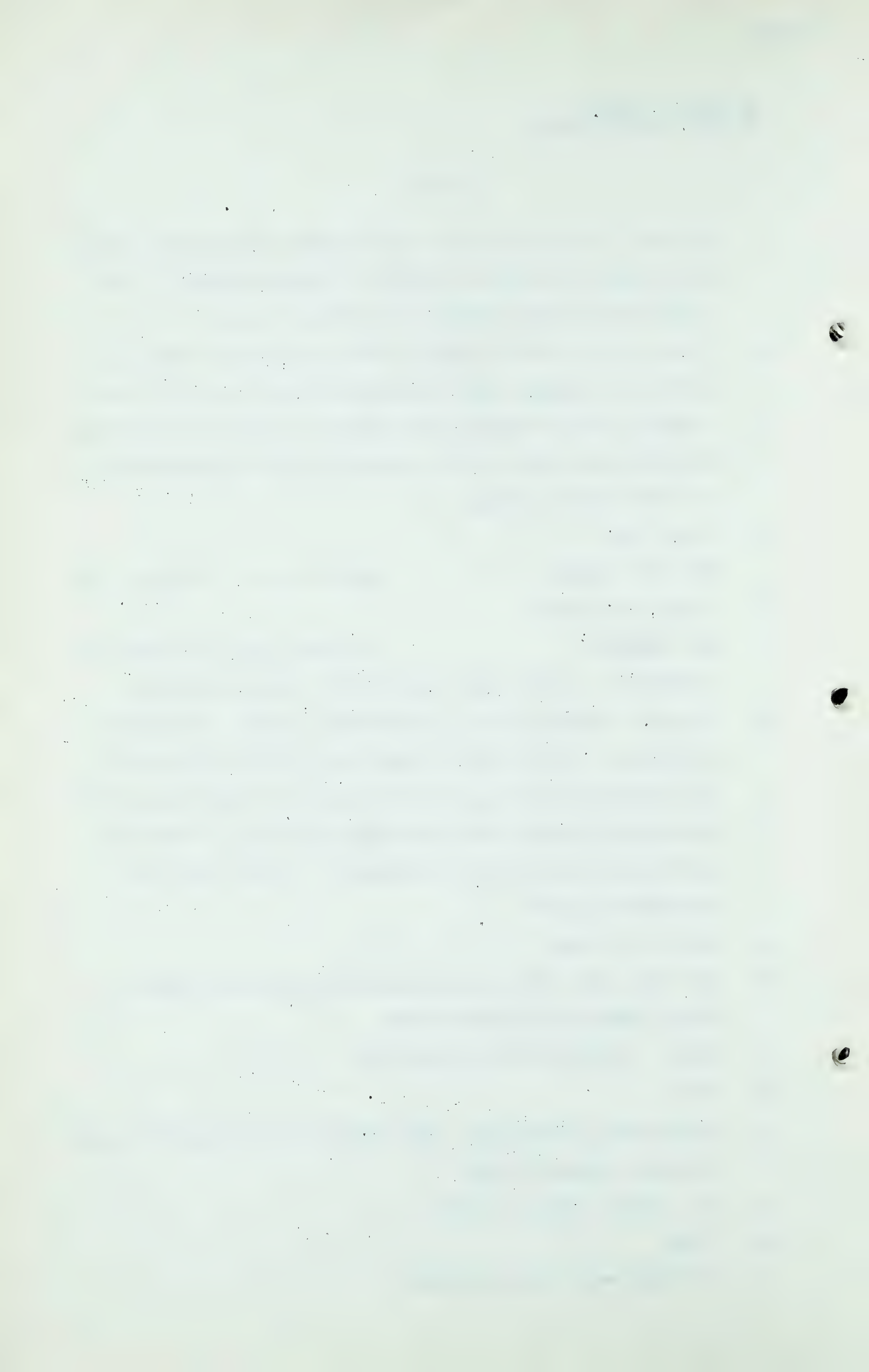
Q Yes.

A Let us say it this way. The question of the export of gas was not decided in 214.

Q No, it was decided in 218?

A Yes.

Q But they were heard jointly?



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2750 -

A Yes.

MR. NOLAN:

When was that, Mr. Porter?

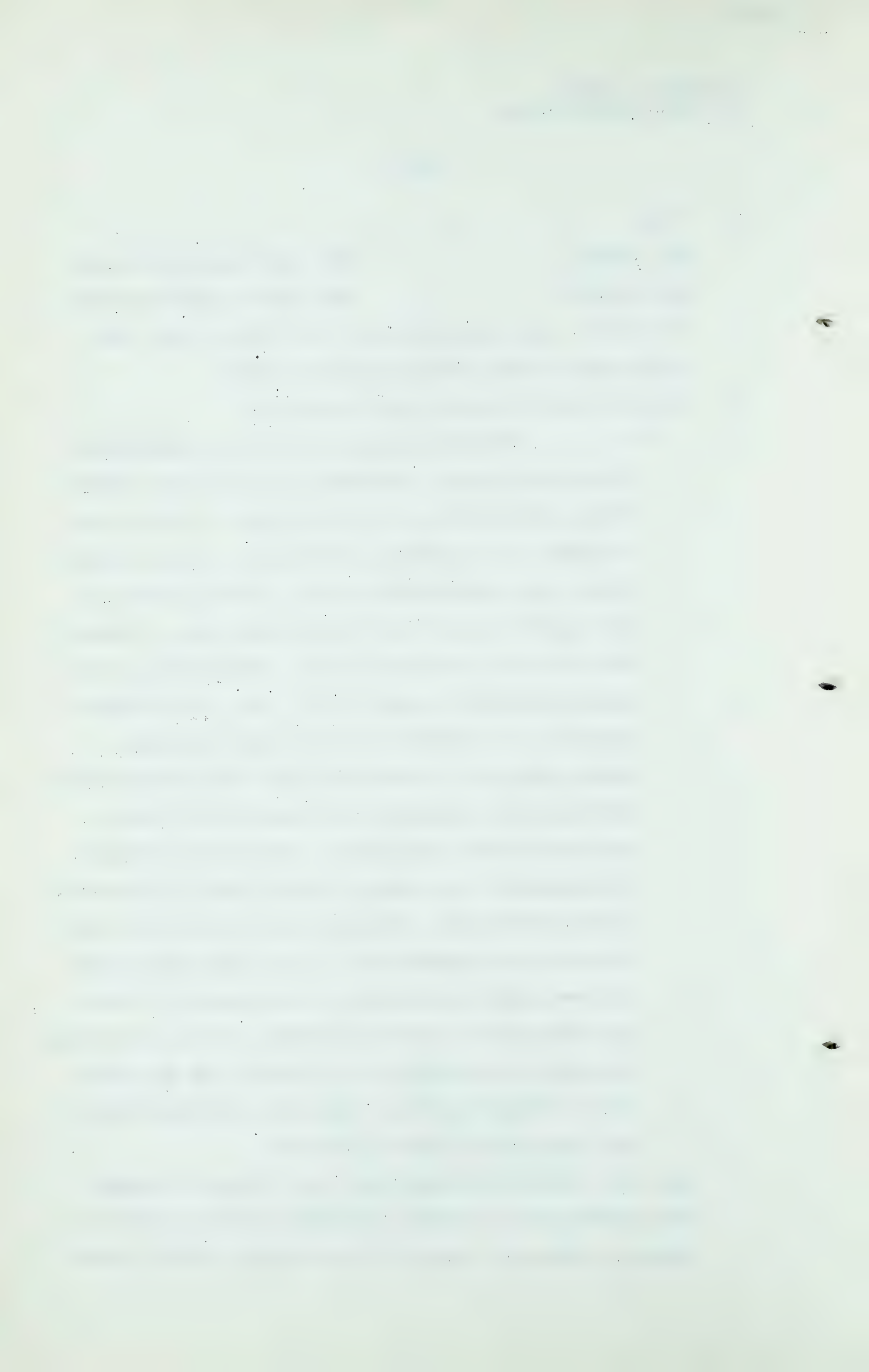
MR. PORTER:

Wait just a second and let me see if I can get this date. The 13th of June, 1951, is the date of the issuance of this order.

Q I would like to read to you from page 7:

" While the application for the exportation of gas rests upon a different section of the statute than an application for a certificate of public convenience and necessity, nevertheless, in an over-all sense, the determination of the issues involved in the application for the exportation of gas to Canada must be made in relation to the determination of the issues involved in Issue No. 6, i.e., the allocation question. For example, if it be shown that the supply which will be available when the new Trunkline and Panhandle facilities are completed will be inadequate to serve present and prospective customers of Panhandle in the United States, there is presented to the Commission a different line of considerations than would be presented if it were established that the new supply would be more than adequate to serve its customers in the United States. It is, therefore, essential to consider both the export and the allocation problem together. Hence both of these issues are reserved for future decision."

Now, am I right in assuming that the allocation program was the business of serving customers within the United States, picking out the one to be served, and the export



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2751 -

program dealt with the export to Canada?

A That is correct, yes.

Q Now, in connection with the allocation program, I direct your attention to some remarks in Opinion 218, which was issued in August 31st, 1951:

" The designed capacity of Panhandle's certificated pipe line facilities is 800,000 Mcf. per day. Temporary authorization to construct facilities for 50,000 Mcf. additional has been granted, bringing the total designed capacity up to 850,000 Mcf."

That has been accomplished, I understand?

A That is right. Those facilities are installed. I think we have a permanent certificate now.

Q Now, in connection with this Hearing and following that adjournment, Panhandle entered into a lot of contracts or some contracts with customers?

A That is correct.

Q Then pursuant to a direction of the Commission contained in 214, their potential customers made nomination of their needs?

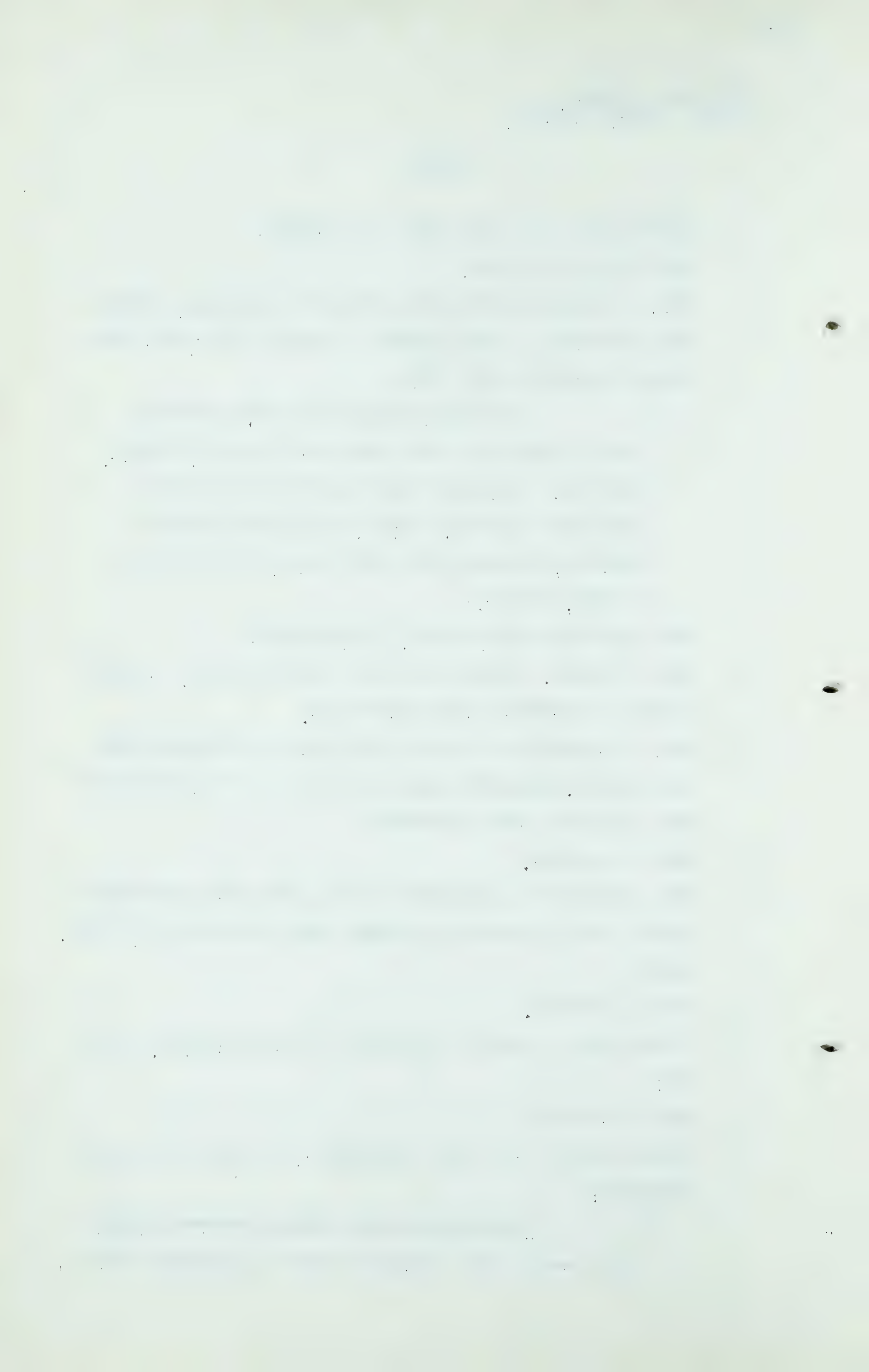
A That is correct.

Q I think that is done by some kind of an affidavit, is it not?

A That is correct.

Q I would like to read you from page 6, at the foot of the paragraph:

" Assuming that the winter contract demand under each of the executed service agreements would



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2752 -

"be effective during the winter 1951-1952, and the other customers would be receiving the volumes nominated as contract demands the total of all 'contract demands' would be 1,092,735 Mcf., or a volume 242,735 Mcf in excess of Panhandle's presently designed system sales capacity."

Is that statement true?

A What you have read? I have read what you have read. What that statement includes is approximately 112 million a day more for Michigan Consolidated Gas Company than they probably will get, another 42 million a day for a company called Gas Service Company, which is now the subject of an abandonment proceeding, and there is one other reduction that will be made, that would be made in that picture.

Q Now, added to such of those as survive, you propose to take another 250 million to Ontario under Mr. Fish's scheme?

A I do not think there is anything in this comment, either opinion, that would prohibit it, sir.

Q You have a designed capacity of 850 million and you are short 247 million.

A I do not say we are short 247 because it is not the case.

Q You have nomination of 247?

A They are a great deal different from contracts.

Q And you are going to have another 250 million?

A I say there is nothing in that Order that would prohibit us from selling this gas to Canada, especially where there was such a strong national interest as would be indicated in a treaty or an international agreement of some kind.

William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2753 -

Q I just wanted to go back to capacity for a moment. Rightly or wrongly your Federal Power Commission seems to have been impressed with the fact that there was 247 million of nominations to which it paid some attention?

A Let me answer you this way, sir. Involved in this proceeding, as I understand it, is the possibility of getting gas for the Northwest section of the United States.

Q I am just --

A Let me finish.

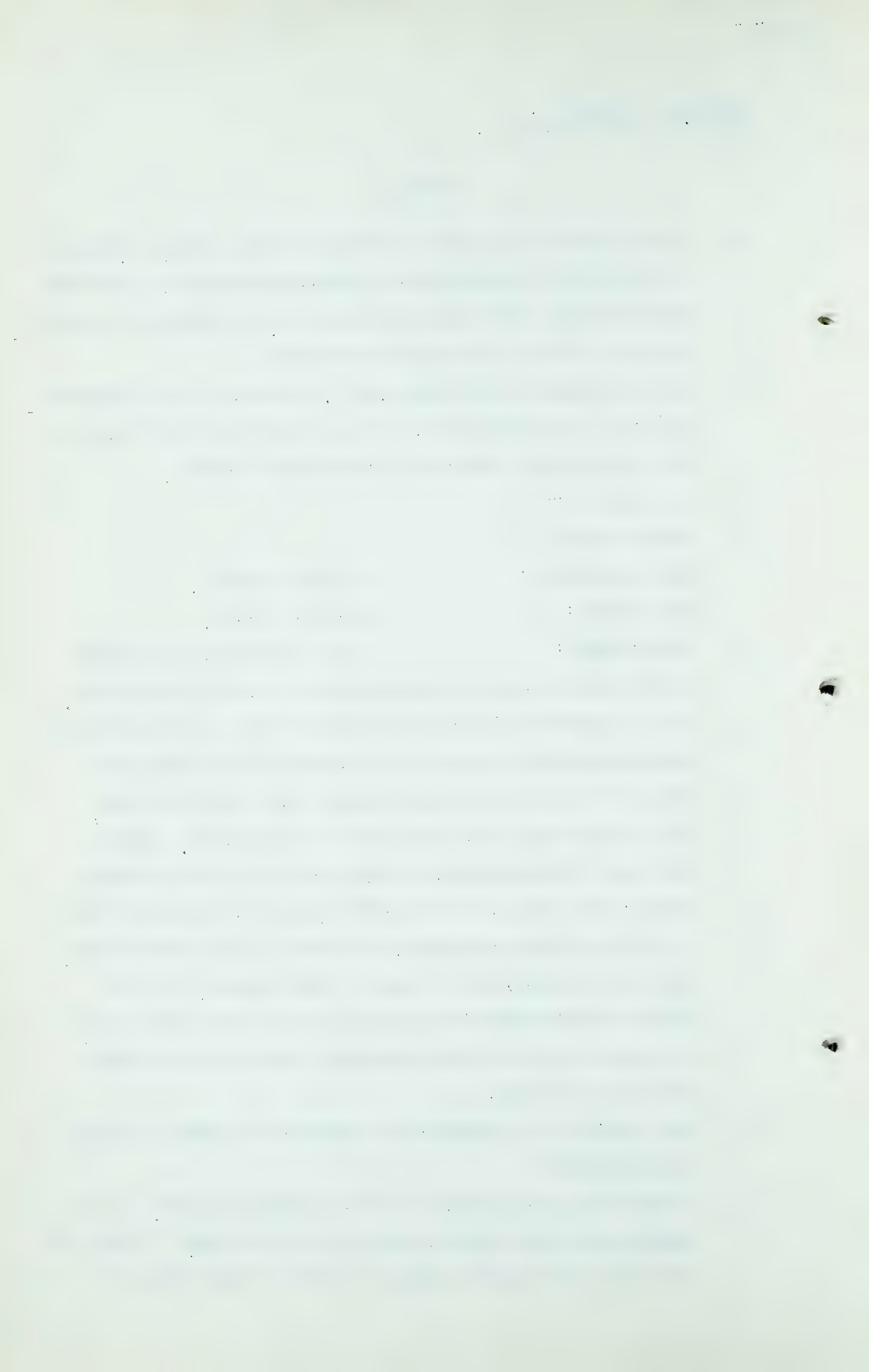
MR. S.B. SMITH: Let him finish.

MR. PORTER: One at a time.

A THE WITNESS: I do not think any pipeline in the United States is selling gas as cheaply as we are. You are underselling all the other fields. If the Federal Power Commission is going to recognize those demands as compared to sections of the country which have not gas, that is one thing, but they have not done that. Taking the case of New England, the East Ohio, the Consolidated system, or, rather, the Columbia system of which Ohio Fuel is one of the big companies, they went in and demanded almost all that gas, yet it went to New England. If the Federal Power Commission is going to take the same policy with regard to the Pacific Northwest you have an entirely different situation.

Q That policy is to transport to the East in order to supply the Northwest?

A The East has gas, has had it for a number of years. I am talking about the Middle West now, not the East. I can not tell you what they are going to do but I think there is



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2754 -

some indication in the case of New England of what they have done before. It is very futile for us to speculate on what they are going to do.

Q I do not think we need to speculate, in 218 the permit for export was refused.

A That is right.

Q And you had a line capacity of 850 million?

A That is right.

Q Which could easily, you say, have been increased?

A Yes.

Q And you have the gas to serve the Ontario market?

A You are going too fast now. In 1950 Panhandle had capacity of 500 million feet of gas.

Q I am talking about the date of this document.

A I may explain it. Panhandle had a capacity of 500 in the beginning of 1950. This new program was a new 350 million feet of gas. It is a job to finance that volume of gas, it is hard to do. These bankers do not give you the money, you have got to take it on an orderly procedure.

Q Now, just a moment. When you got before the Federal Power Commission in this application, the judgment on which I hold in my hand, you had a capacity of 850 million almost completed?

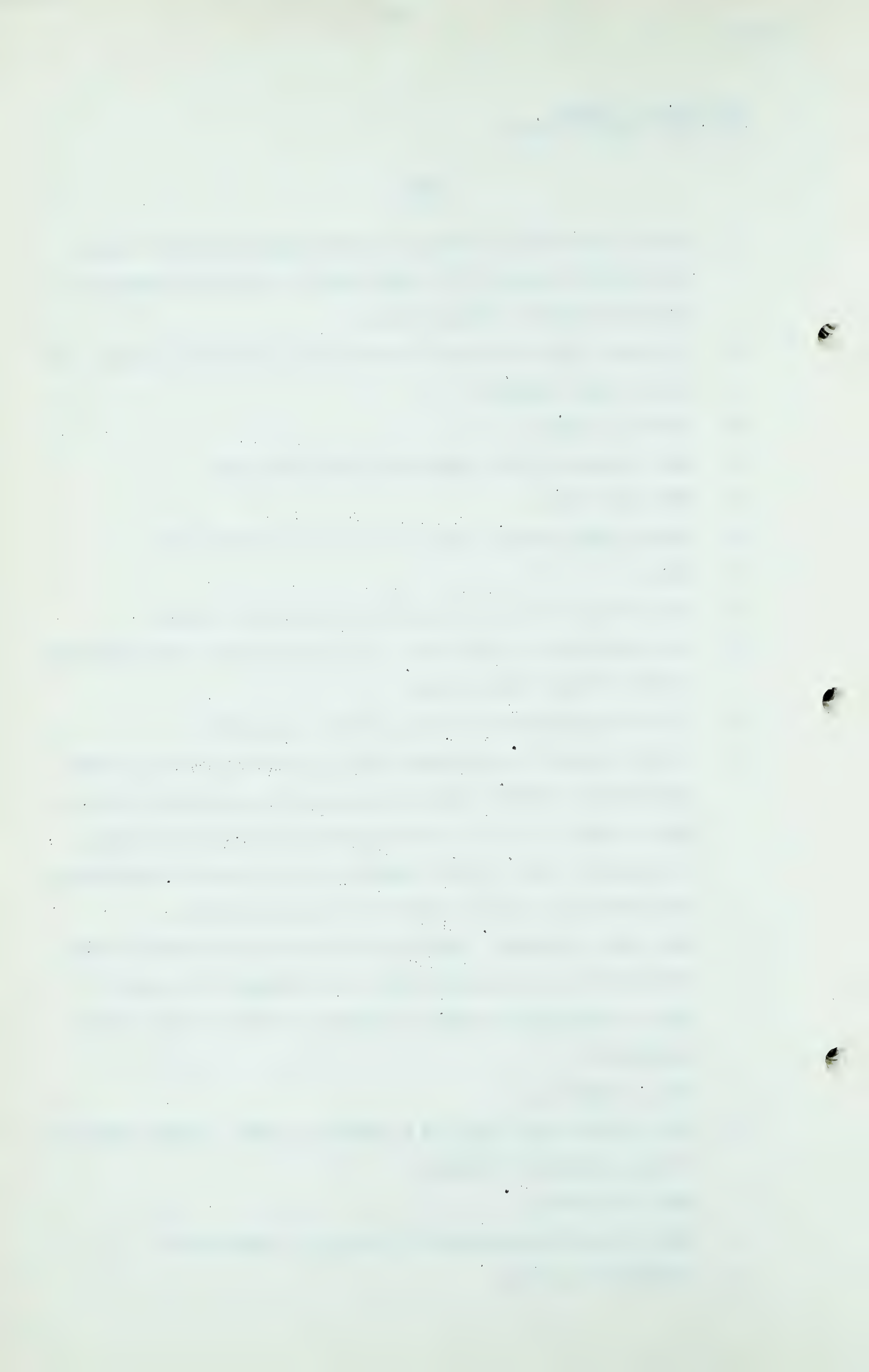
A Yes, we had it.

Q And you were applying for a permit to take a large quantity of gas to Western Ontario?

A That is correct.

Q Now, you had the capacity to take it, didn't you?

A I believe so, yes.



William C. Keefe,
Cr. Ex. by Mr. Porter.

- 2755 -

Q And you had the gas, didn't you?

A We had what we thought was sufficient gas, yes.

Q And the permit was refused?

A That is correct, but that is an entirely different situation.

Q Now, just a moment.

MR. S.B. SMITH: Why don't you let the witness finish, Mr. Porter.

MR. PORTER: Have you finished?

MR. S.B. SMITH: Yes, I am finished, but I am going to insist on your letting the witness finish.

MR. PORTER: Thanks very much.

MR. S.B. SMITH: And I am doing that. May the witness proceed, Mr. Chairman?

THE CHAIRMAN: Proceed.

A THE WITNESS: It is an entirely different situation. In this arrangement, these proposals you have, you contemplate an international agreement on the part of two Governments, which I think expresses international policy entirely differently than our proposals to Union.

(Go to page 2756)

W. C. Keefe,
Cr. Ex. by Mr. Porter.

- 2756 -

Q I think you said that under the existing natural gas policy of the United States, as paid down in The Natural Gas Act, and reflected in this application, that it would be impossible for Panhandle to get a permit to export this gas?

A I did not.

Q You did not?

A No.

Q Well, is it the. . .

MR.S. B.SMITH: Would you mind letting him finish his answer before you start asking a question again?

MR. C. E. SMITH: Well, I think the witness is at fault too, as he keeps interrupting the question before it is finished half of the time.

Q MR. PORTER: Let us all try and start over again?

A Yes.

Q Do you need the Treaty or don't you?

A Let me say this, that I am here, Mr. Porter, at the instructions of two of the top executives of this Company, and there is an agreement in evidence here, Exhibit 95, and I certainly have not any authority to vary it. Let us state it that way.

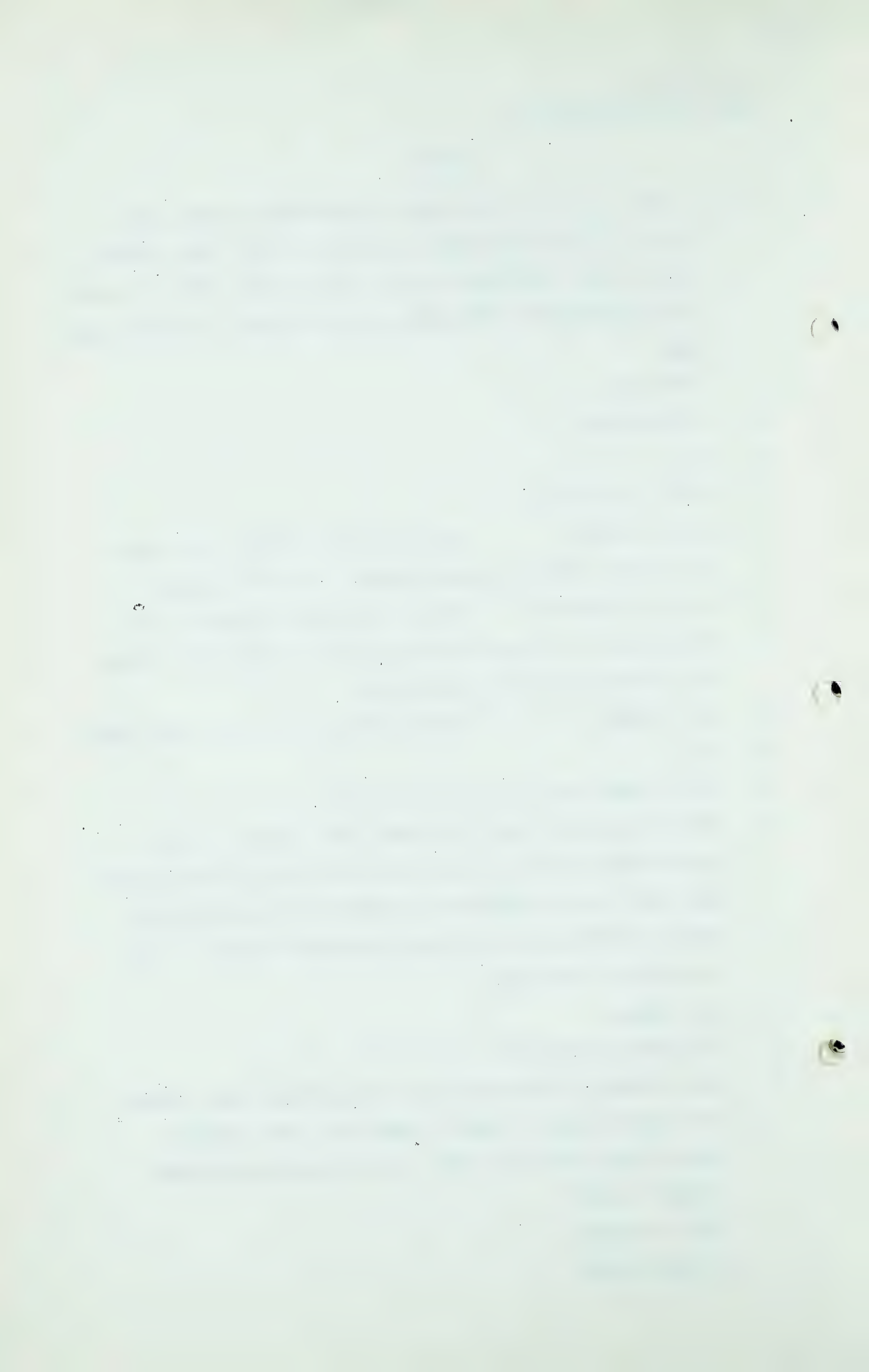
Q All right,

A It speaks for itself.

Q Now, perhaps I can come at this in another way. Given the capacity and the gas to supply it, your company made an application to take gas to Ontario, which was refused in 218?

A That is correct.

Q That is correct?



W. C. Keefe,
Cr. Ex. by Mr. Porter

- 2757 -

A Yes.

Q In connection with . . .

A I wish while we are reading this, you have asked about 218 wish you would read the provisions denying the export of gas.

Q I am going to put it into evidence.

A I mean, you have read certain other parts.

Q Yes?

A You will notice that there is a provision which denies firm gas to Union Gas of Canada at this time.

Q I will read that.

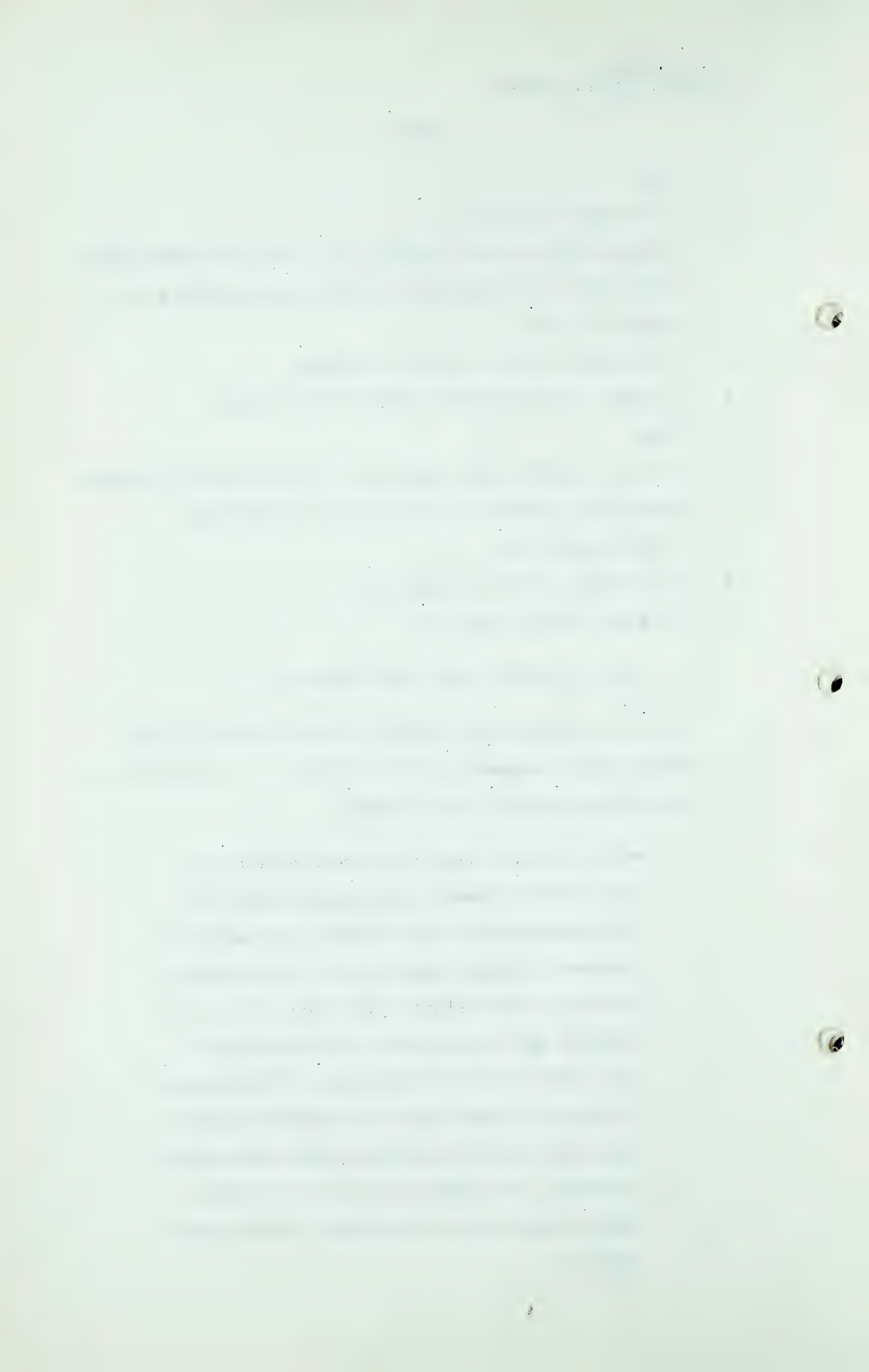
A All right. It is on page 19.

Q It says this on page 19, -

"It is obvious from the foregoing....."

Now, the "foregoing" includes these nominations and this lack of capacity, and the extent of commitment in the United States, and it says, -

"It is obvious from the foregoing that, in view of the demonstrated requirements of customers within the United States and the present designed capacity of the Panhandle system of 850 million cubic feet daily, no natural gas is available for exportation on a firm basis at this time. The record, therefore, shows that the proposed exportation will not be consistent with the public interest. The application in this docket will, therefore, be dismissed without prejudice."



W. C. Keefe,
Cr. Ex. by Mr. Porter

- 2758 -

and so far as Ontario is concerned, without heat.

Now, suppose we get this line built. . .

MR. PORTER: I think I should make these two exhibits, Mr. Chairman, so that the Board can see the figures to which I have made reference.

THE CHAIRMAN: The first will be Exhibit 101, which one is that?

MR. PORTER: That is 214.

OPINION NO. 214 MARKED EXHIBIT
101.

MR. PORTER. That is the opinion on the general Hearings which adjourned the export question to be dealt with by 218.

THE CHAIRMAN: 218 will be marked as Exhibit 102.

OPINION NO. 218 MARKED EXHIBIT
102.

Q MR. PORTER: I have talked to you about control, but assuming that the permit were issued, we would have gas delivered to the Canadian Border for consumption in Canada, over which no regulatory body in the United States would have control, the Federal Power Commission would not have it?

A That is correct.

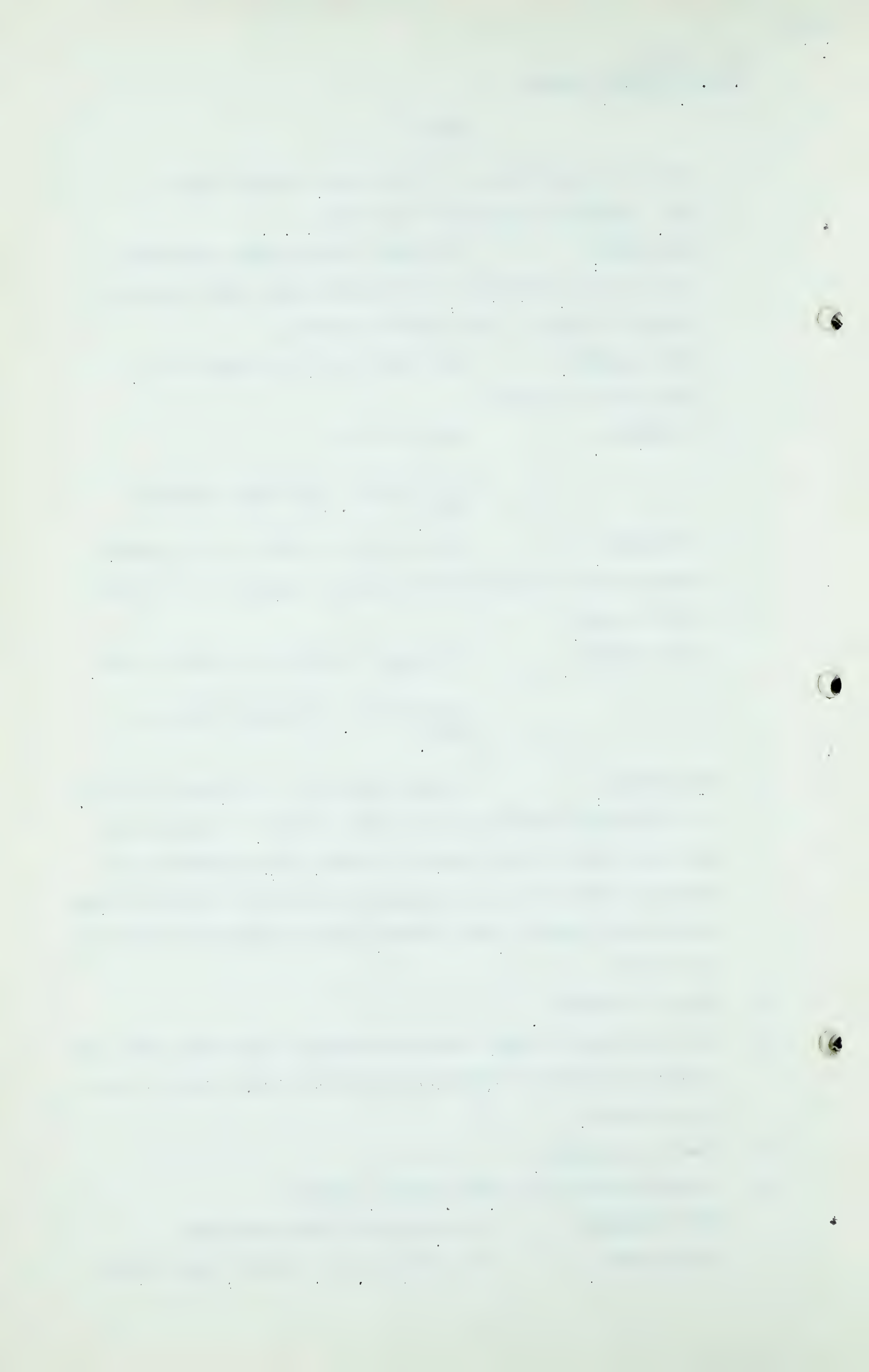
Q And it is quite clear that no Canadian body would have any control over that Canadian regulatory body, until it got into Canada?

A That is correct.

Q I think that is all, Mr. Keefe, thanks.

THE CHAIRMAN: Mr. Milvain, any questions?

MR. MILVAIN: My friend, Mr. Porter, has covered



W. C. Keefe,
Exam. by Mr. C. E. Smith

- 2759-

the subject I had in mind, and I, therefore, have no questions.

.....

EXAMINATION BY MR. C. E. SMITH:

Q Mr. Keefe, just to continue what Mr. Porter was asking or talking to you about?

A Yes, sir.

Q Is it your opinion that in order to assure the accomplishment of this arrangement with Delhi or Trans-Canada, whatever it is. . .

MR. S. B. SMITH: I am sorry, between Pacific Northwest and Prairie.

Q MR. C. E. SMITH: Between Pacific Northwest and Prairie. .

MR. S. B. SMITH: There is a little difference.

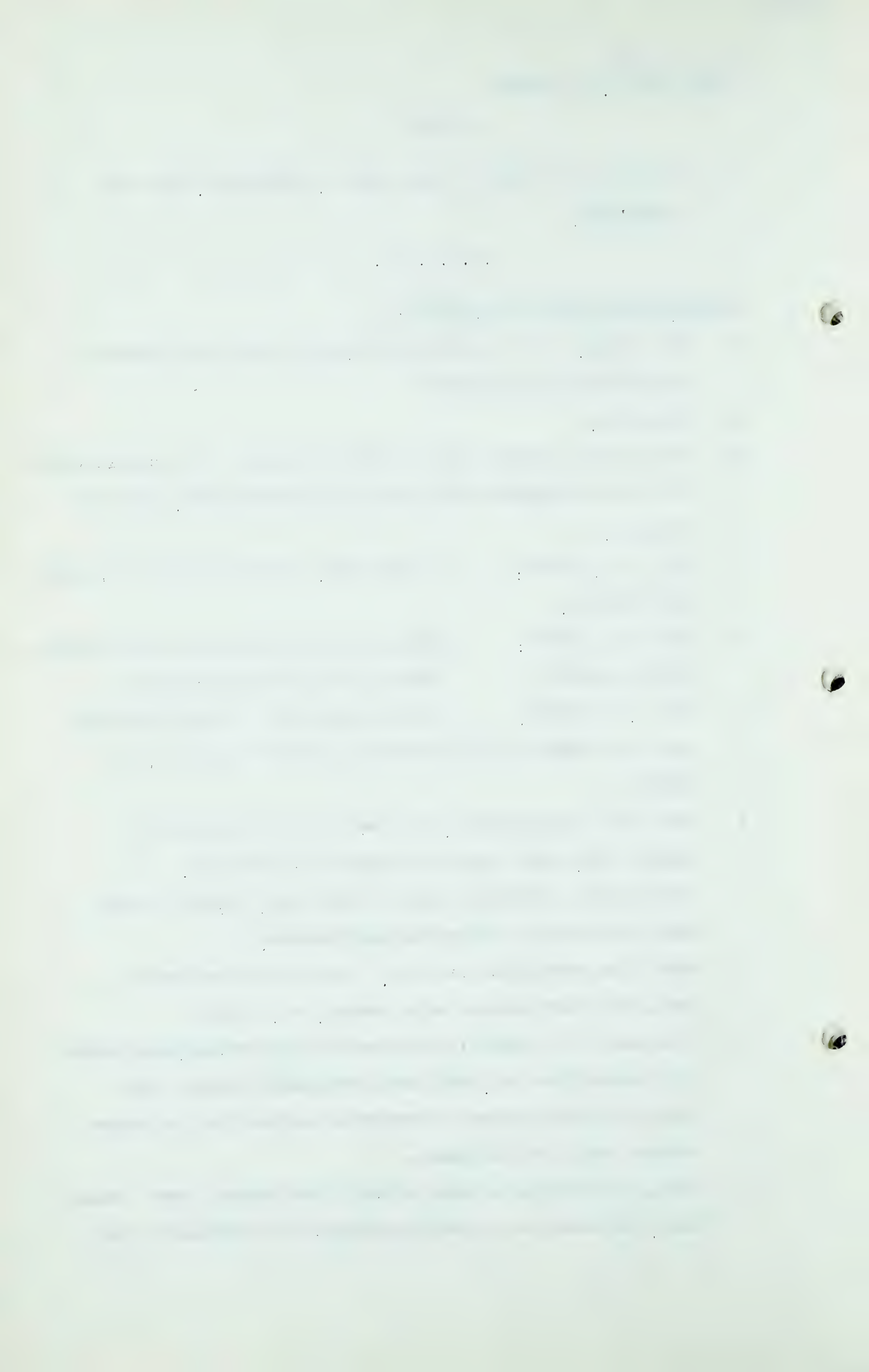
Q MR. C. E. SMITH: Do you mean that a treaty between the two companies is necessary, is that what we are to take?

A Well, as I said before, sir, we are faced here with Exhibit 95, and I have no authority to vary it. I presume that could be done the same way, through other ways, such as the Union Gas application.

Q What I am getting at is this, not what authority you have, but your opinion as a lawyer, Mr. Keefe?

A I assume it is possible to make the same arrangement under The Natural Gas Act, and some arrangement before this Board, and such other Governmental authorities in either country that are necessary.

Q Well, if it could be done through the Federal Power Commission, or under any other Governmental or regulatory body



W.C.Keefe,
Exam. by Mr. C. E. Smith

- 2760 -

of the United States, would, in your opinion, they have the power to prevent export of gas to Windsor, let us say, notwithstanding the conditions of any contract to which the companies were a party?

A That is correct. They have done so, as I said before.

Q Have you read any of the submissions that have been put in by Northwest, Mr. Nolan's client?

A No, I have not, sir.

Q Have you read the evidence of Mr. Dixon, given just a week or two ago?

A No, I have not.

Q With respect to what the Federal Power Commission could or would do with the matter of gas going from the United States over to British Columbia, in Canada, you have not read that?

A You mean the gas coming into the United States and going back again into British Columbia?

Q Yes?

A What is your question?

Q Well, I want to know what power the F.P.C., in your opinion, might have to prevent that, in plain language, notwithstanding the terms of contract?

A It is certainly highly unlikely if the Federal Power Commission sanctions gas from, gas to come into the United States from Canada, that it would bar the Province of British Columbia from having some of it. I think we are speculating about something there that I, frankly, do not know whether it would be an export of gas or not. I doubt that it would be. It is something I have never thought of, I just cannot express an opinion on it, as to

W. C. Keefe,
Exam. by Mr. C. E. Smith
Re. Ex. by Mr. S. B. Smith

- 2761--

whether it would be an export at all.

Q I was talking about legal powers and jurisdiction?

A There is no question that the Federal Power Commission has the power to bar the export of gas. If it is the export of gas, maybe they do, but is it an export of gas, and that I do not know.

Q You have not considered it?

A No, I have not considered it.

Q I want to get your help as a lawyer, Mr. Keefe?

A I have not considered it, no.

.....

RE-EXAMINATION BY MR. S. B. SMITH:

Q Mr. Keefe, in relation to the applications before the Federal Power Commission, and with regard to the Union Gas Company. . .

A Yes, the Union Gas Company of Canada.

Q . . . and those proposed arrangements, was there any element of reciprocal exchange of gas between United States and Canada at all?

A Not to my knowledge. I am quite sure there was not.

THE CHAIRMAN: Thank you, Mr. Keefe.

MR. S. B. SMITH: I will call Mr. Binford Arney.

.....

Binford Arney,
Dir. Ex. by Mr. S. B. Smith

- 2762 -

BINFORD ARNEY, having been first
duly sworn, examined by Mr. S. B. Smith, testified as
follows:-

Q Mr. Arney, you live in Corpus Christi, Texas?

A That is correct, sir.

Q Where is Corpus Christi?

A Well, Corpus Christi is a little bit south of here. It
is on the Gulf Coast of Texas, 230 miles south of Houston
and 130 miles, approximately, north of Brownsville.

Q It is a little warmer down there than here?

A Slightly, sir.

MR. C. E. SMITH: Today?

Q MR. S. B. SMITH: Mr. Arney, you are, I believe, a
graduate of Northwestern University in pre-law in 1929,
and of Drake University in Des Moines in 1930 in law?

A That is correct, sir.

Q And you have been, I understand, practising law in Texas
since your graduation in 1931?

A That is correct, sir, at all times.

Q Have you specialized at all since you commenced to practice
law?

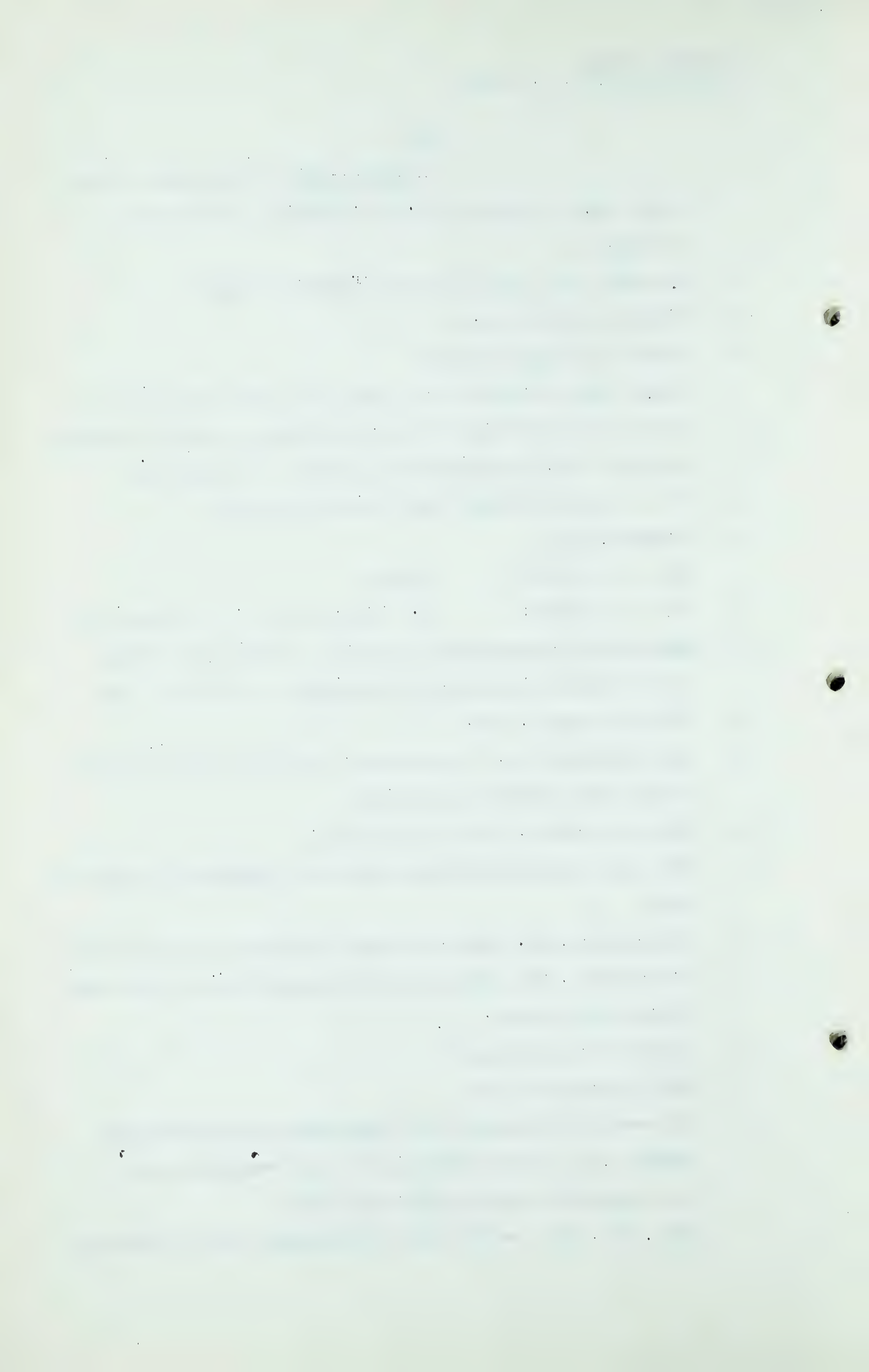
A My practice, Mr. Smith, has been confined to the field of
oil and gas, and questions relating thereto, at all times
during this period.

Q Since your graduation?

A That is correct, sir.

Q And were you connected with Tennessee Gas Transmission
Company, in any way when that line was constructed to
the Appalachian area in 1943 and 1944?

A Yes, sir, from the 26th day of September, 1943, that was



Binford Arney,
Dir.Ex. by Mr. S. B. Smith

- 2763 -

the date upon which the conditions in the Federal Power Commission's certificate were fulfilled, I was general counsel and vice-president of Tennessee Gas during the construction program, and for the first year following the operation of the line, upon its completion.

Q Are you still a director of that company?

A No, I am no officer or director of Tennessee Gas Transmission Company at this time.

Q Well, did you, in relation to those matter, have anything to do with the proceedings before the Federal Power Commission, and were you familiar with them?

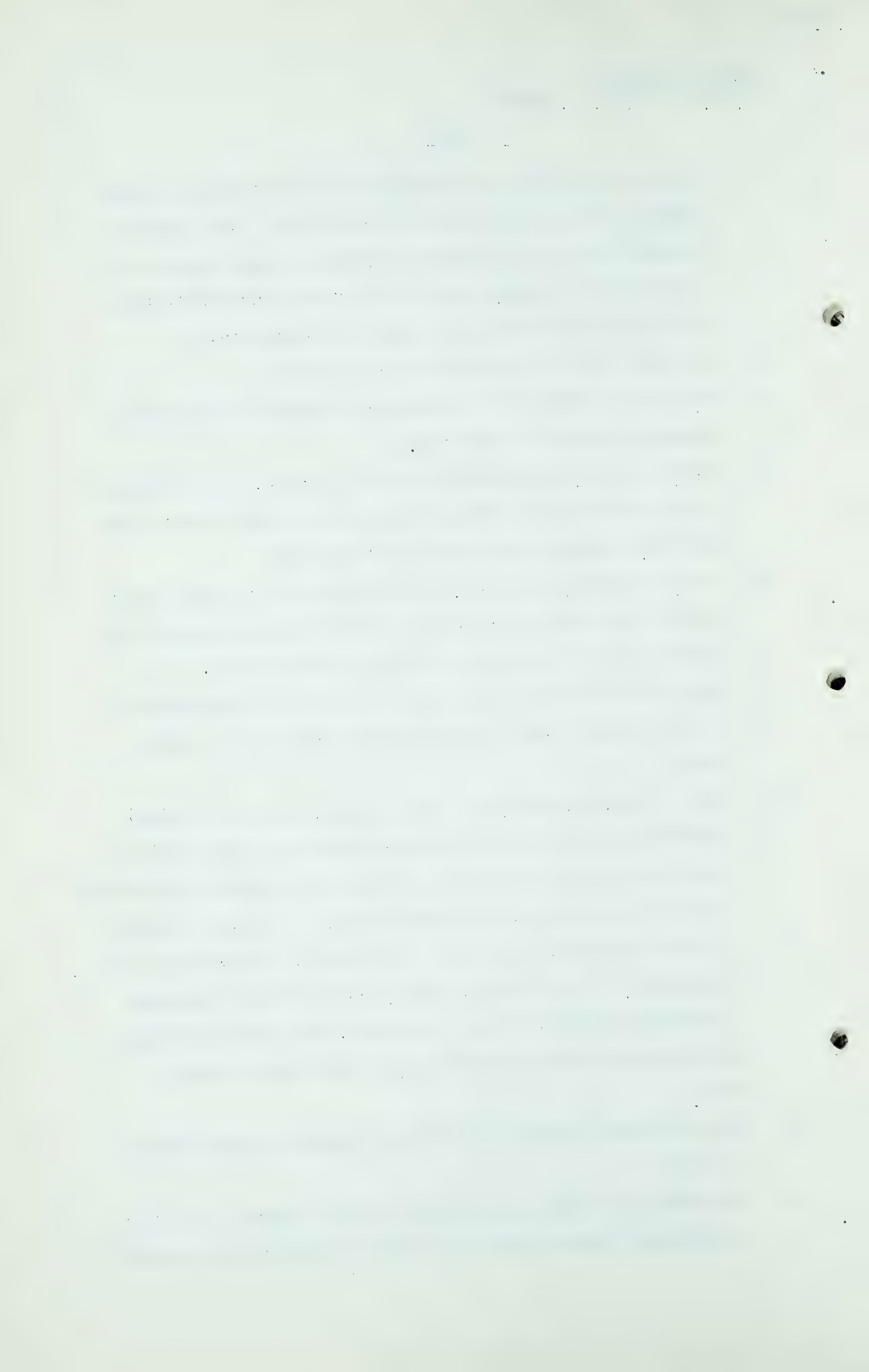
A Well, Mr. Smith, that was, we will say for practical purposes, that was the first time that I had an occasion to make a study or analysis of The Natural Gas Act.

Q Well, what did you have to do so far as the application to the Federal Power Commission was concerned in that case?

A When I became counsel of that company, for the original construction of that line from a point at Corpus Christi to a point in West Virginia, when the original certificate for that construction had been issued, it was with regard to later applications that I dealt with, for expansion or additions. I did not personally conduct those Hearings before the Federal Power Commission. The actual Hearings at Washington were conducted by a firm called Wheat & May.

Q And who gave instructions for the conduct of that application?

A Between myself and the President of the Company. We conferred with Wheat & May as to what we desired with regard



Binford Arney,
Dir. Ex. by Mr. S. B. Smith

- 2764 -

to the application to the Federal Power Commission.

Q You were, I take it, rather intimately concerned with that application?

A I consider that I was thoroughly familiar with it, sir.

Q Have you, in your practice in Texas, acted for gas producers at any time?

A My practice might be said to be a representation of independent producers. I represent several independent gas producers. These gas producers are clients, and in turn they sell natural gas in both interstate and foreign commerce. At the present time the particular parties that I represent fell to four interstate lines and to one line for foreign export.

Q And in your legal practice, have you had any legal experience so far as the exportation of gas from the United States if concerned?

A I have, sir. At the end of 1945, I was employed by Reynosa Pipe Line Company.

Q Reynosa Pipe Line Company?

A Yes.

Q How do you spell that?

A R-e-y-n-o-s-a.

Q R-e-y-n-o-s-a?

A Yes.

Q The Reynosa Pipe Line Company?

A The Reynosa Pipe Line Company, and the La Gloria Corporation.

Q How do you spell that?

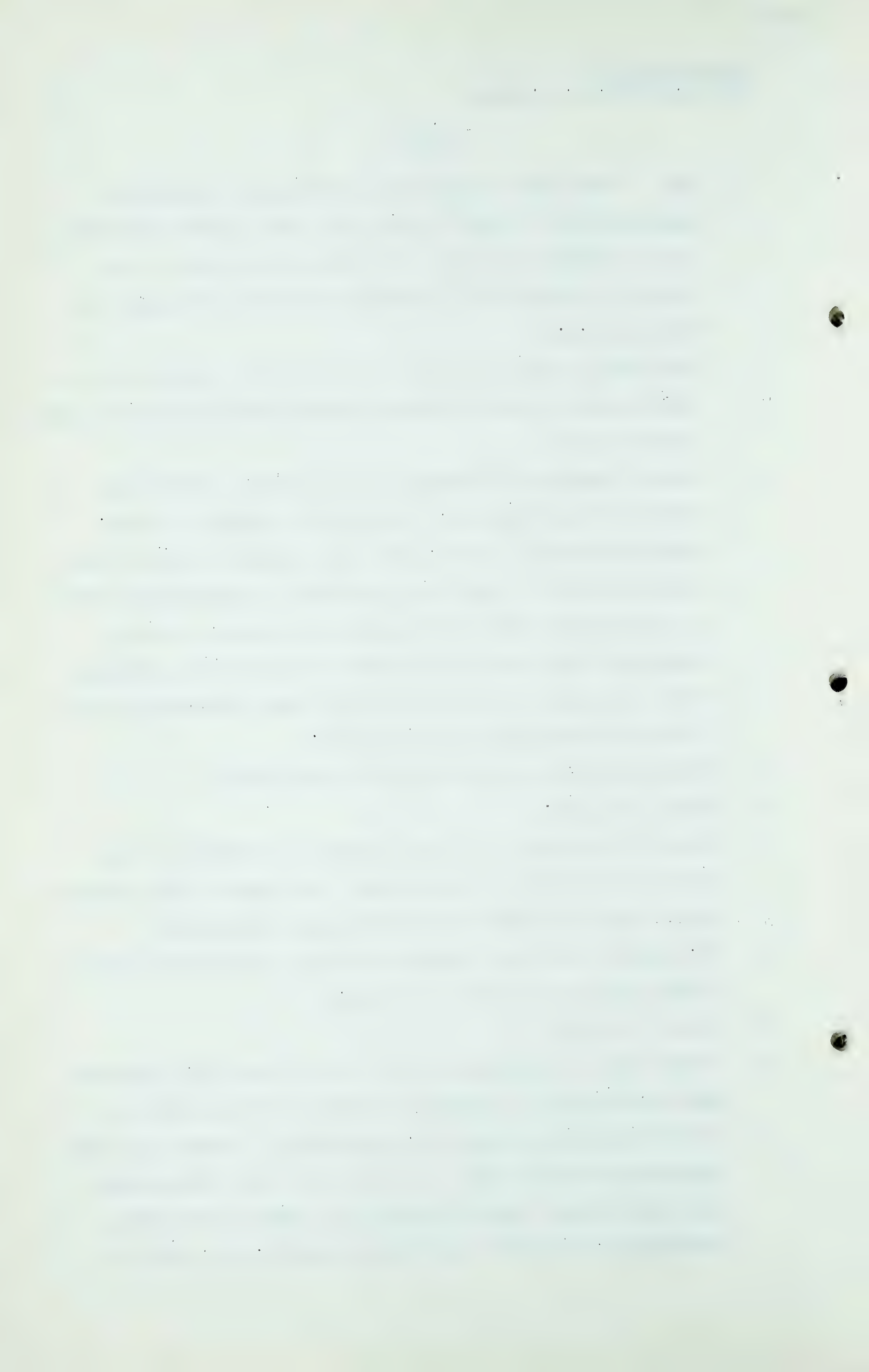
A La G-l-o-r-i-a.

Q La Gloria Corporation?

Binford Arney,
Dir. Ex. by Mr. S. B. Smith

- 2765 -

- A Yes. That was to handle and prosecute for them their applications to export natural gas from the State of Texas to the Republic of Mexico for sale and delivery to the Republic of Mexico to a company called Gas Industrial de Monterrey, S.A.
- Q And what did you do yourself, so far as the conduct of the application before the Federal Power Commission was concerned in that case?
- A Well, I personally conducted those hearings before the Federal Power Commission, obtained the permit to export, and a Presidential permit, and, as a matter of fact, those who attempted to oppose that exportation appealed the Order of the Federal Power Commission to the Courts, and the appeal was conducted in the Fifth Circuit Court of Appeal, and I took part in the proceedings, and the authorization Orders of the Commission were upheld.
- Q You personally acted as counsel in that case?
- A Yes, I did, sir.
- Q Now, in relation to the application of the Reynosa Pipe Line Company, did you examine any other export applications which had been before the Federal Power Commission?
- A Mr. Smith, the export cases of natural gas from the United States are not very many in number.
- Q About how many?
- A There were no regulations prior to the year 1938, and there are approximately 5 export cases that have been heard by the Federal Power Commission. Obviously, I wanted to become thoroughly familiar with the four cases that had preceded the time when my client engaged in a contract involving exportation, so that I did become familiar, sir, with the



Binford Arney,
Dir. Ex. by Mr. S. B. Smith

- 2766 -

former instances of exportation of natural gas.

Q And that was by examination of the record, or in what way?

A By the examination of the record, and by the record I mean the files as well as the record.

Q Yes?

A And the Orders of the Federal Power Commission relating to these other exports, three of which were across Texas, across the Texas border into the Republic of Mexico.

Q Mr. Arney, is the export of Reynosa Pipe Line Company, which, I believe, was permitted, still in effect at the present time?

A Yes, sir, gas is being exported this morning under that permit, was yesterday and will be tomorrow.

Q Do you still act for that company?

A I do, sir.

Q Have you made any efforts since 1945 to keep yourself advised on legal matters relating to exportation? Exportation of gas, of course?

A Yes generally, Mr. Smith, I try to keep current at all times with matters relating to exportation.

Q And are you a director of any pipe line corporation at the present time?

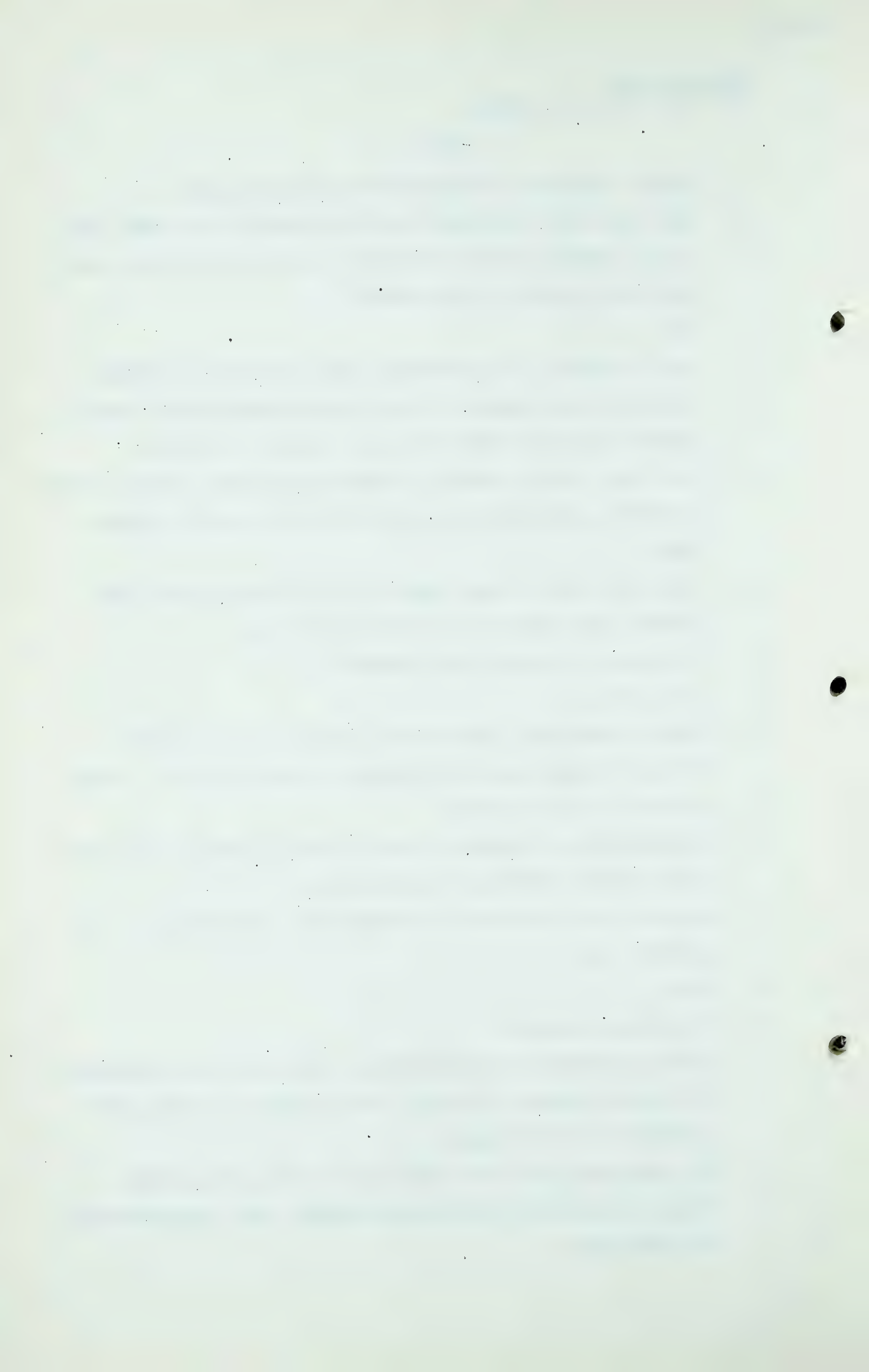
A Yes.

Q The Texas-Illinois?

A I am a director of Texas-Illinois, which has just completed a line from Texas to Chicago, or to Joliet, for the metropolitan area of Chicago.

Q How long have you been a director of that corporation?

A Since the directors were first elected, sir, approximately two years ago.



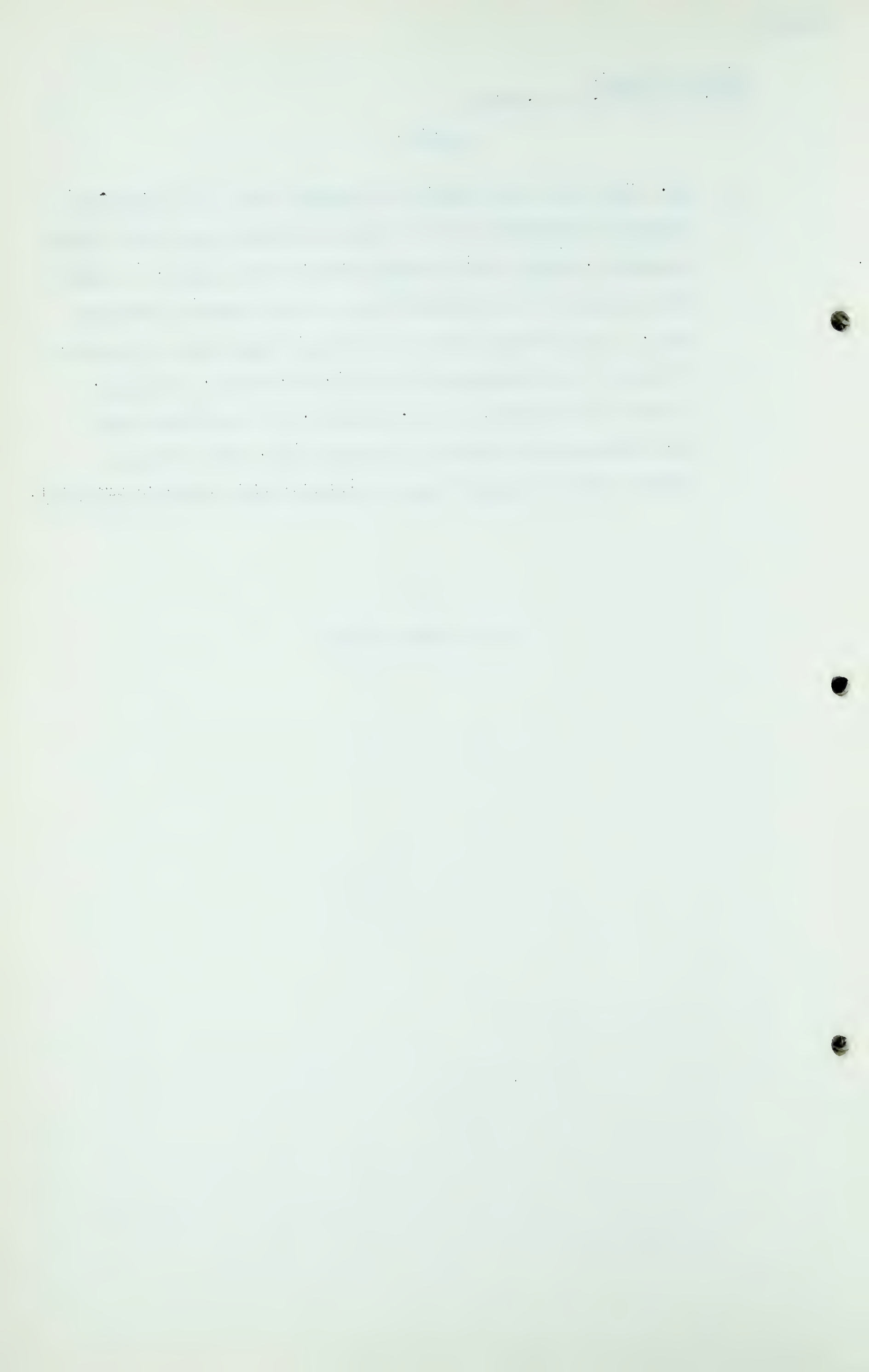
Binford Arney,
Dir.Ex. by Mr. S. B.Smith

- 2767 -

Q Mr. Arney, are you generally familiar with the reciprocal exchange proposals of the Pacific Northwest and the Prairie Companies, before this Commission and this Board, in which they propose to take Alberta gas to the Pacific Northwest area, in the United States and bring Texas gas to Ontario?

A I believe I am familiar with that, Mr. Smith. At least, I read the testimony of Mr. Herring, the testimony that Mr. Herring gave before this Commission, and I read an exhibit which outlined that reciprocal gas exchange proposal.

(Go to page 2768)



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2768 -

Q I think that is this white-covered one, exhibit 94?

A That is correct, sir.

Q You also read his evidence?

A Yes, sir.

Q Now, Mr. Arney, I would like to turn to some legal questions about the exportation and importation of natural gas to and from the United States. First I would like to ask you what legislative body in the United States has jurisdiction in law over foreign commerce?

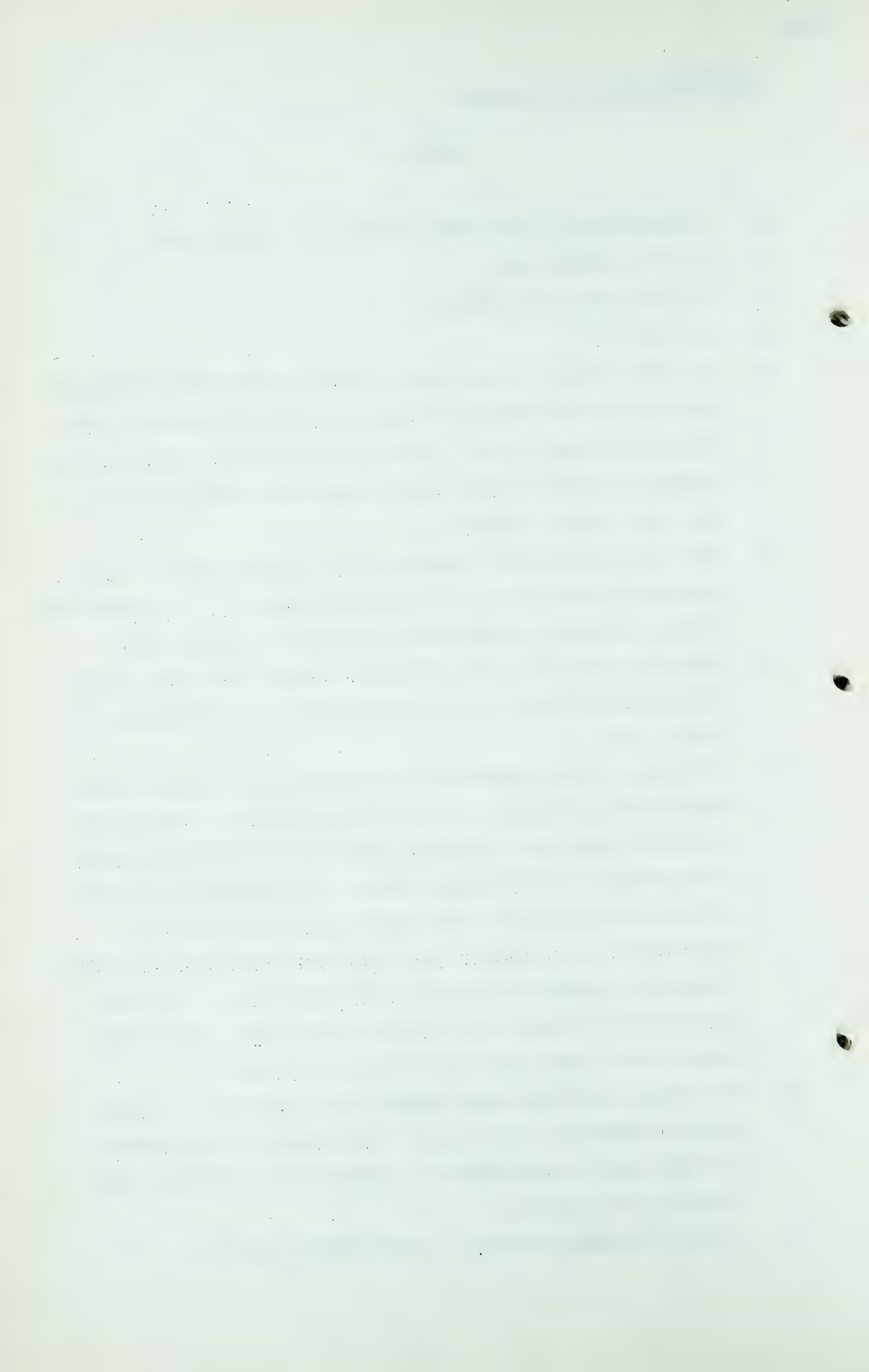
A The matter of foreign commerce in the United States is the exclusive province of the Federal Government. That power over foreign commerce is exclusively vested in Congress, sir.

Q Would you now tell me what Federal statutes there are in the United States related to the exportation and importation of natural gas?

A The matter of the exportation of natural gas from the United States into a foreign country, and the matter of importation of natural gas from a foreign country into the United States, are governed by the Natural Gas Act. The particular section of the Natural Gas Act which governs such exportation or importation is in reality the first section of the Act, which outlines following the preamble and definition. It is referred to as section 3 of the Natural Gas Act. Our legal citation for that would be 15 U.S. C.A. 717-d.

Q Mr. Arney, would you mind reading that section so we might have it verbatim in the record? The heading in the Statute at that point is Exportation or Importation of Natural Gas. That follows section 3.

A I am now reading section 3 of the Natural Gas Act.

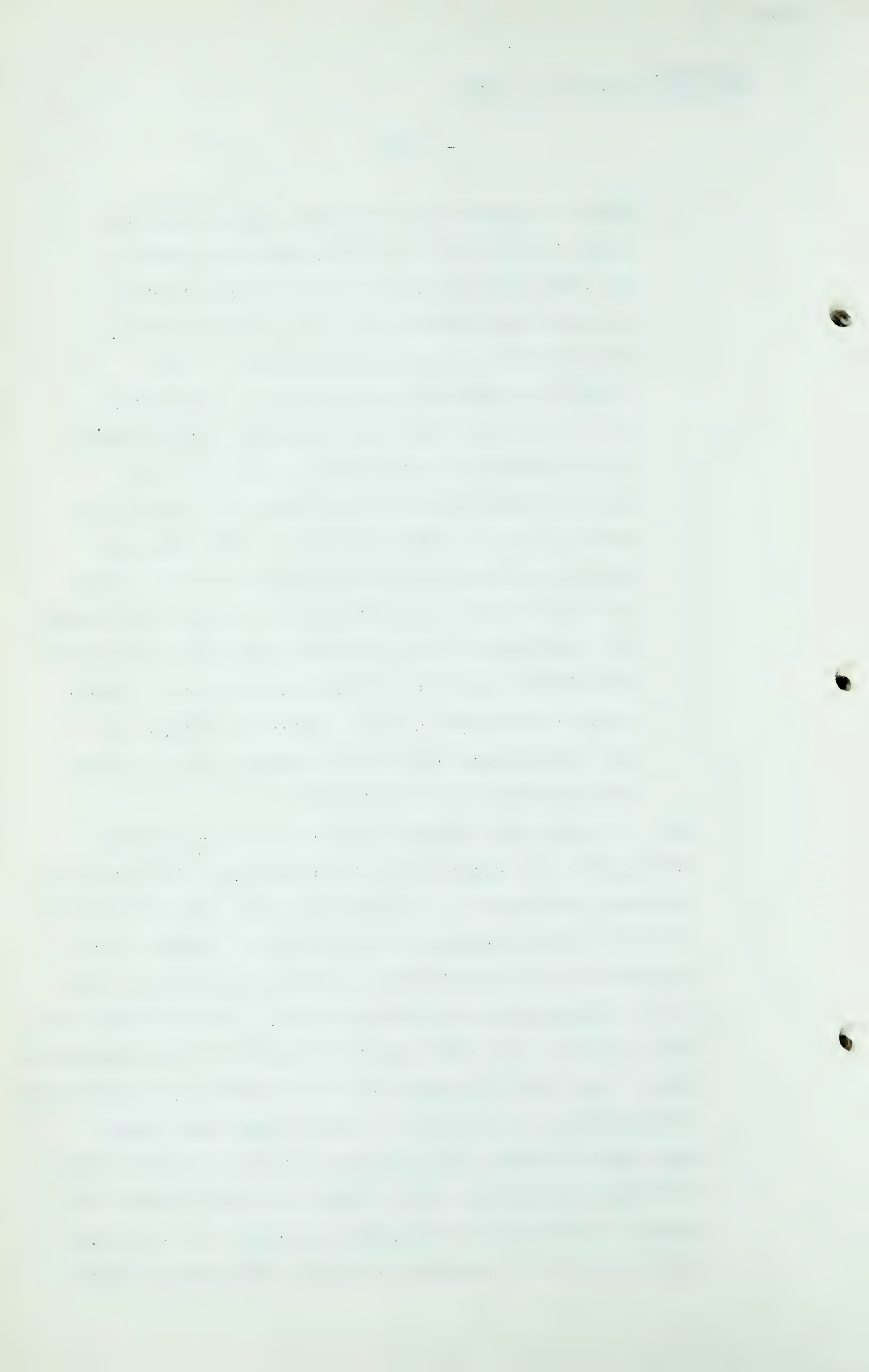


B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2769 -

"After six months from the date on which this Act takes effect no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country, without first having secured an Order of the Commission authorizing it to do so. The Commission shall issue such Order upon application unless after opportunity for hearing it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its Order grant such application in the whole or in part with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental Order in the premises as it may be found necessary or appropriate."

Now, to answer your former question as to the statutes dealing with the exportation or importation, I have read the pertinent provision of the Natural Gas Act. In addition to the Order that is referred to in section 3, however, it is necessary in the United States to obtain by virtue of Commission Regulations and Executive Orders, an additional Order that we refer to as a "Presidential Permit". The Presidential Permit is an Order necessary for the construction, maintenance, and operation of facilities at the International Border. When Franklin Delano Roosevelt was President of United States he handed an Executive Order asking the Federal Power Commission to receive the application and make its recommendations to him as to whether or not the Presidential Permit



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2770 -

should issue. Consequently, in practice that Executive Order still is in effect. The Federal Power Commission on either an exportation case or importation case considers its application under section 3, and if it finds that to be consistent with the public interest then it already has the factual situation upon which to recommend to the President that the Presidential Permit issue.

Q Now, Mr. Arney, have you heard of a case in which the Federal Power Commission made a finding under section 3 and also made a recommendation in respect to the Presidential permit, in which the Presidential permit was not granted in accordance with their recommendation and in conformity with it?

A No. The Commission has always certainly been consistent. If they find it is not inconsistent with the public interest to authorize export, it does not turn around and find contrary in its opinion to the President. The 3G Order goes out first and subsequently in a matter of a relatively short time the Presidential Permit follows.

Q That Executive Order of the President of the United States was dated, I think, July 13th, 1939 and is called Executive Order No. 8202?

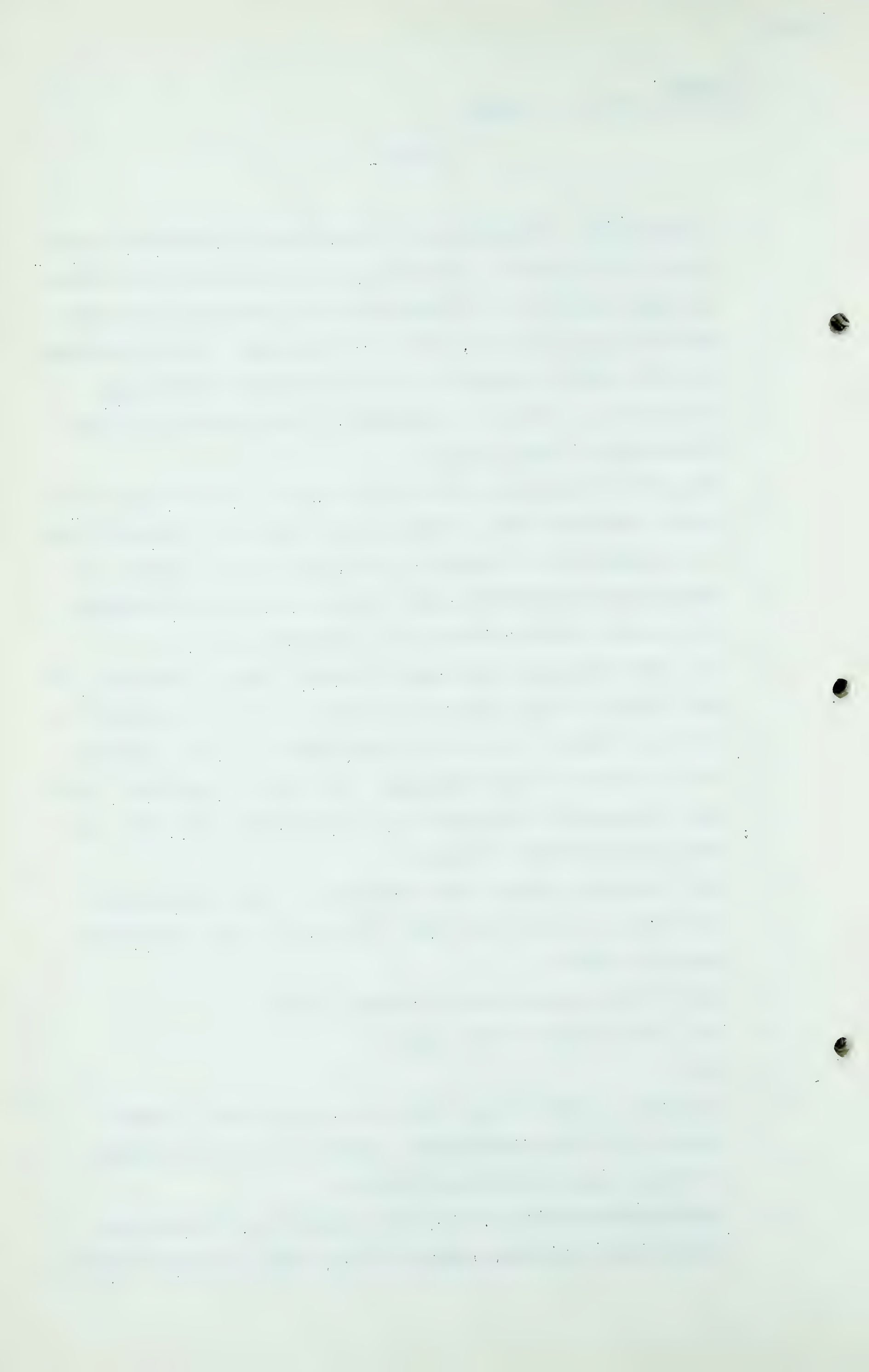
A That is the precise Order to which I refer.

Q Yes, and you have it here too?

A Yes.

Q Mr. Arney, I would like to ask you to give what, in your opinion, is the primary issue involved in the exportation of natural gas in the United States.

A The only fundamental issue, sir, that may be derived from reading the applicable statute is the single issue of whether



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

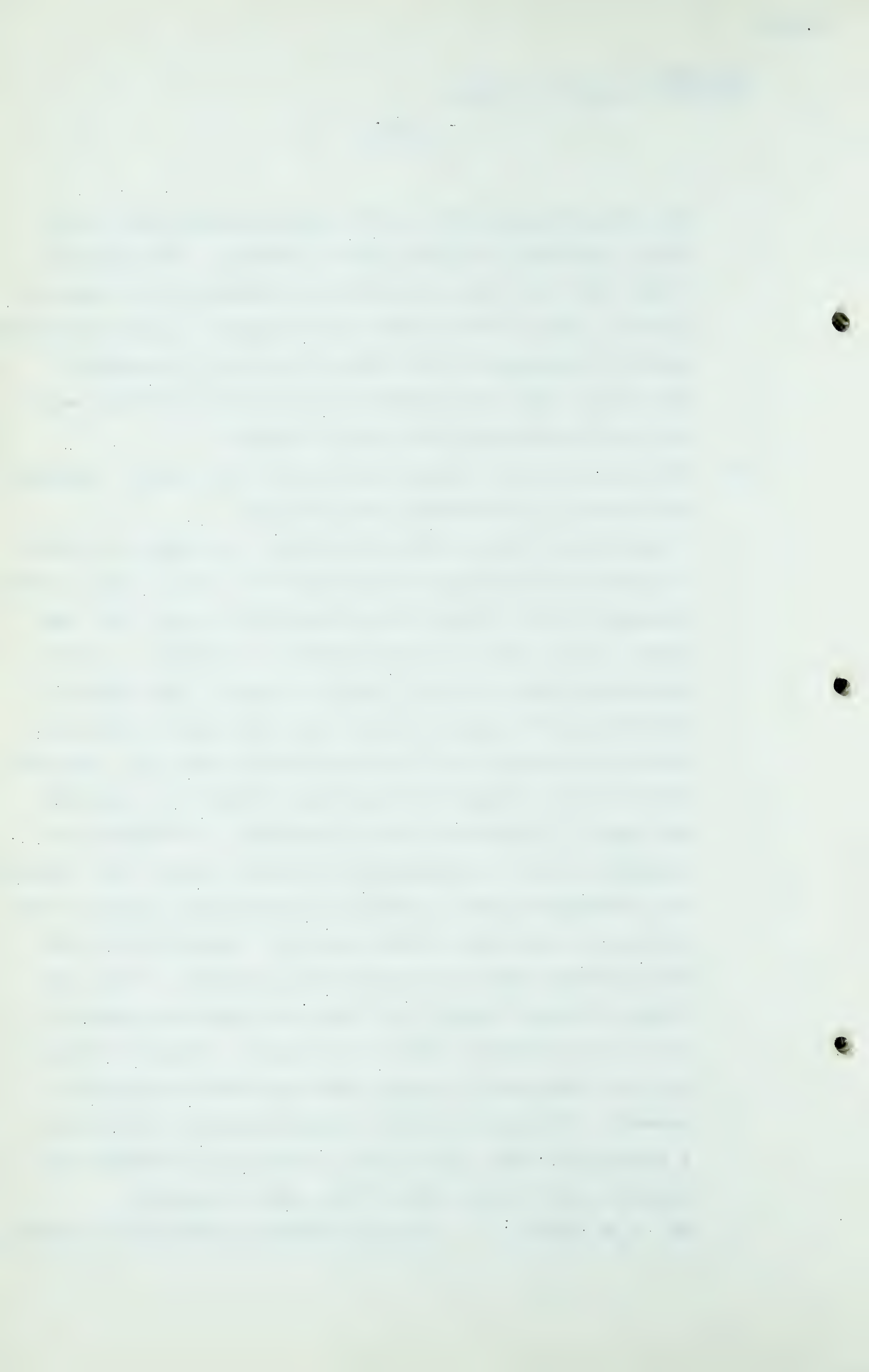
- 2771 -

the proposed exportation or the proposed importation is or is not consistent with the public interest. There are no other issues that can be found in the working of the statute itself. That is the one issue and Congress, I assume advisedly, used the language that the Order shall issue, a mandatory directive, unless the Commission finds that such Order would not be consistent with the public interest.

Q Mr. Arney, in your opinion what do the words "public interest" in section 3 of the Natural Gas Act mean?

A I spent a good deal of time, Mr. Smith, in trying to be able to answer that question and in order to be able to make my own arguments to the Federal Power Commission on what that term means. I have come to a very definite conclusion. I am of the opinion that the words "public interest" that appear in section 3 of the Natural Gas Act can only mean the interest of all of the people of the United States taken as a composite whole for the interests of the United States as a community at large. To reach any other conclusion, if Congress had intended to tell the people of the United States it was speaking of a particular group of people or a particular segment of the country, or one city, or one locality, I am sure they would have precisely said so, and not having done so, I think the "public interest" means, as I said, the composite interest of all the communities and all the people. Congress did not tell our Commission in detail how to determine that public interest. They gave them the broadest scope and power, and I think said, "That is up to you, Gentlemen, to define and consider and determine what is the public interest."

MR. C. E. SMITH: Has he studied "proven" and "probable",



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2772 -

Mr. Smith?

MR. S. B. SMITH: You might ask him, Mr. Smith.

Q Mr. Arney, in your opinion, what do the words "consistent with the public interest" in section 3 mean?

A Now, I am going to use somebody's opinion other than my own on those words.

Q Do you give that as your opinion?

A I can also give it as my opinion. I am going to tell you how I arrived at the words "consistent with the public interest". We have two utility Acts in the United States, one is the Federal Power Act and the Natural Gas Act, one relating to electrical energy and the other relating to natural gas. Both Acts use this particular phrase, "consistent with the public interest," and under the Power Act the Ninth Circuit Court of Appeals was asked to interpret and define those particular words. I have here, if I can read the wording of the Court, the way they define that term.

Q I think you may proceed to do that.

A I would rather read it in the exact wording of the Court. This particular decision appears in Pacific Power & Light Company vs Federal Power Commission, 111 Federal Sec., 1014. This is the wording of the Ninth Circuit Court:

"The phrase 'consistent with the public interest' does not connote a public benefit to be derived or suggest the idea of a promotion of the public interest. The thought conveyed is merely one of compatability. Congress resorted to this language rather than to the use of the stock permit, public convenience or necessity, or to such phrases as

B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2773 -

"'in furtherance of' or 'will promote the public interest,' used in Interstate Commerce legislation, and the language employed ought to be construed to mean no more than it says. It is enough that applicants show that the merger is compatible with public interest."

Therefore, Mr. Smith, my opinion is that the words "consistent with the public interest" means "compatible with the public interest", not against the public interest. It does not need adding to or increasing and it is a less degree than the term "public convenience and necessity."

MR. C. E. SMITH: Would you take "consistent" rather than "compatible", Mr. Smith?

MR. S. B. SMITH: "Consistent", of course, is the word in the Statute.

MR. C. E. SMITH: So we change it to "compatible"?

MR. S. B. SMITH: That is what the Ninth Circuit Court of Appeal did, apparently.

Q Mr. Arney, in your opinion, would the proposed reciprocal exchange of gas by Pacific Northwest and the Prairie Gas be consistent with the words "the public interest" as used in section 3 of the Federal Gas Act of the United States?

MR. PORTER: Now, surely, that opinion must be given for what it is worth.

A And that is all it is going to be given for, sir. I certainly am not justifying as to what the members of our Federal Power Commission might think or might conclude.

MR. PORTER: First rate, sir.

A Certainly, as I understand this interchange reciprocal arrangement of gas, while from a technical standpoint it may be an

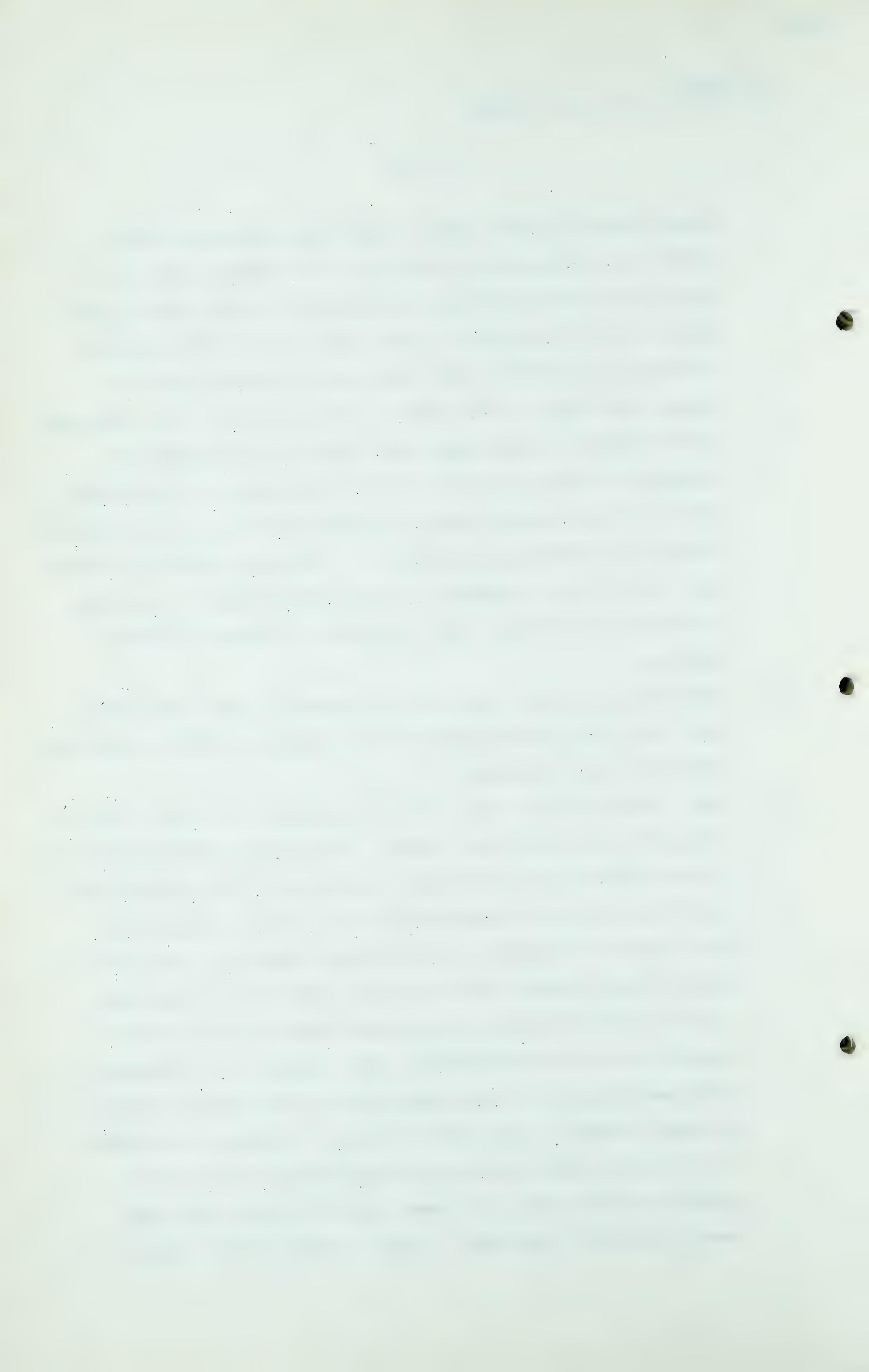
B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2774 -

export and an import, from a practical standpoint and in reality it is merely an exchange of a commodity where, in effect, gas from the Province of Alberta would enure to the benefit of the citizens of your nation in the Eastern part of Canada, and whereby the Texas gas or Oklahoma gas or Kansas gas would in turn enure to the benefit of the citizens in the States of Washington and Oregon, under conditions whereby, by the use of this media or exchange, the consuming public of both nations would receive a benefit, the utilization of gas at a lower price per Mcf. Under that state of facts and with that as a premise, it certainly appears to me that it would be consistent with the public interests of both nations.

Q Have you any further reasons for supporting your conclusion that that proposed exchange in your opinion would be consistent with the public interest?

A Now, I would like to make this clear again. I am not talking, certainly, for anyone but myself. The Federal Power Commission of the United States has never had before it for approval any application that is comparable to that that is proposed in this instance by Pacific Northwest and Prairie. Certainly if there be any argument as to why gas should not be imported into the United States or any reason why gas should not be exported from the United States into Canada on a reciprocal arrangement where you are each getting the benefit, getting the same number of cubic feet of gas, it appears to me that, in my opinion only, such an exchange would be more in the public interest than any former export proposal that has ever been before our body. Now, in these other cases of



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2775 -

export to the Government of the Republic of Mexico, that I am personally familiar with. We do not have the exchange feature. We just had the difference and had a question whether we were going to export gas from the United States into Mexico, no reciprocal arrangement.

MR. S. B. SMITH:

Q What were some of the reasons that were advanced in that case in support of the application to export to Mexico?

A Why it was consistent to the public interest?

Q Yes?

A Well, I can tell you that very easily. I have in general had a number of reasons. The United States, as a matter of knowledge, which you all know, imports from the Republic of Mexico many strategic materials, just as the United States imports from Canada large and great volumes of strategic materials, basic metal, wood pulp, paper and so forth. From the remarks that have been made by the President of the United States and the Department of State on reciprocal exchange agreements and free trade between the countries of the Americas, in these other cases we pointed out as one element that might be considered by the Commission was this free exchange of goods and commodities.

Q Were those statements used in evidence in that Reynosa case before the Federal Power Commission?

A I quoted them in my brief. I have with my particular statement on the foreign policy of the United States to which I referred.

Q That is a Presidential statement and the statement of the State Department, was it?

A Yes, sir.

B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2776 -

Q Would you read those?

A The purpose for such statements was that when a Commission was trying to set what was in the public interest, certainly if the very thing being proposed was considered consistent with the foreign policy of the country, which is to be assumed at all times as being consistent, and pursuant to the public interest, then the proposal would be likewise. I am quoting now from the Department of State bulletin of date February 3rd, 1946, which Department of State bulletin quotes the President of the United States in his State of the Union message as follows:-

" Advances in science, in communication, in transportation have compressed the world into a community. The economic and political health of each member of the world community bears directly on the economic and political health of each other member.

The view of this government is that, in the longer run our economic prosperity and the prosperity of the whole world are best served by the elimination of artificial barriers to international trade, whether in the form of unreasonable tariffs or tariff preferences or commercial quotas or embargos or the restrictive practice of cartels.

On October 27, 1945, I made in New York City the following public statement of my understanding of the fundamental foreign policy of the United States. I believe that policy to be in accord with the opinion of Congress and of the people of the United States. I believe that that policy carries

B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2777 -

"out our fundamental objectives.

We believe that all states which are accepted in the society of nations should have access on equal terms to the trade and the raw materials of the world.

That is our foreign policy."

The other statement to which I referred a moment ago appeared in the Department of State Bulletin of January 6th - 13th, 1946. It is a quotation from the Honourable Spruille Braden, Assistant Secretary of State at the time for American Republic Affairs, in which he states:

"We believe first of all that we should do everything in our power to help our American neighbors to increase industrialization along sound lines and to achieve higher standards of living.

We want to see this hemisphere an integral part of a freely trading world. The best way we know to protect this hemisphere - and ourselves - is to help promote prosperity and stability and mutual trust not only throughout the Americas but throughout the worlds. We think that co-operation should be reciprocal - a two-way street.

We offer our friendship and co-operation on a reciprocal basis, each country giving in proportion of its abilities - economic, intellectual, and in other fields. Through such co-operation we can all benefit, from the raising of standards of living and the growth of democracy in each country."

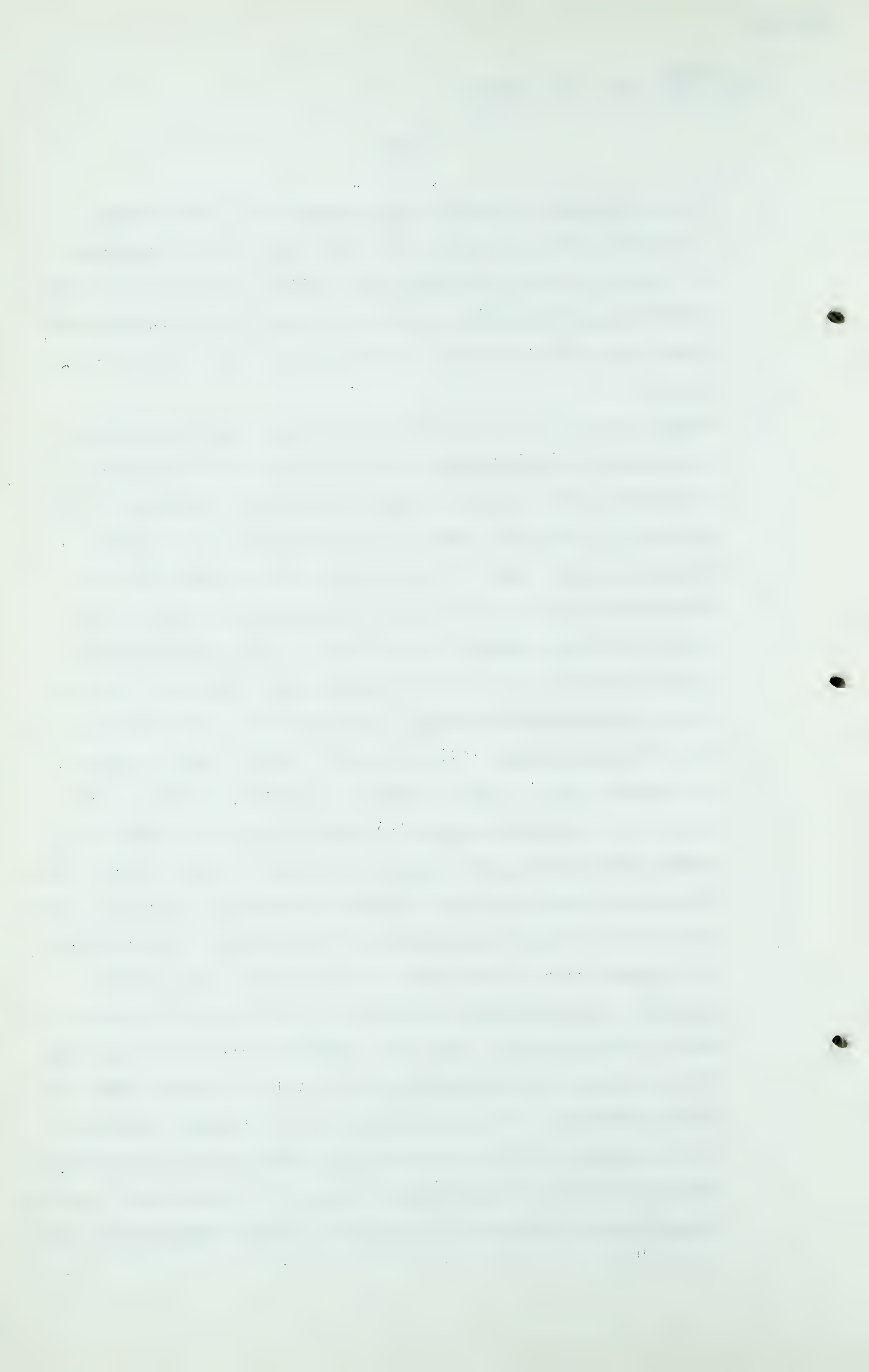
Q Mr. Arney, I take it you are thoroughly familiar with all of the provisions of the Natural Gas Act of the United States.

B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2778 -

Would you agree to express any opinion as to the bearing or relationship with section 7, dealing with the extension of facilities and abandonment of service, might have, if any, upon the application to export and import gas on a reciprocal basis such as we have been talking about under section 3 of the Act?

Q Well, I was sitting here this morning and heard some other references to allocations from the witness that preceded me. I recognize that there has been considerable confusion on the allocation provisions under the Natural Gas Act. In my opinion a great deal of the confusion and trouble has come when there has been combined in one application additional service to one community or one area in the United States, as was shown in the Panhandle Eastern case where at the same time there had been pending a question of a rather small export to a foreign nation. You refer, Mr. Smith, not to section 7 in toto but only to section (a). As a part of section 7(a) there is a provision that the Commission has no authority to compel any natural gas company to enlarge its facilities. The Commission cannot tell one of these Interstate companies, "Now, you have to double the capacity of your line." In my opinion 7(a) takes care of the situation where there was existing capacity in an existing line that was not totally committed to where it was possible for other communities to take advantage of that unsold, undelivered service to fulfil public needs in their community. Now, in this case it is entirely different, it has nothing to do with these proceedings we have had before. In this particular case whoever proposed to export gas from the United States and import gas into the United States would have



B. Arney,
Dir. Ex. by Mr. S. B. Smith.

- 2779 -

to go before the Federal Power Commission and file its application. But I would envision that this would be a proposal whereby additional facilities would be constructed solely for the purpose of handling a firm export into Canada for X years, 20 years or whatever the terms of the agreement are, and that is the only basis on which the applicant would construct those additional facilities, say, if they had the authorization from the Federal Power Commission. If they did not get it they would not construct it. And at the same time it would certainly be tied to and predicated upon receiving a like quantity of gas from Alberta. Consequently, to get the different reciprocal arrangement, I do not envision the complications which otherwise could arise in 7(a).

Q In relation to the ordinary type of application for export such as they have had?

A That is right. I believe Panhandle Eastern -- they enlarged their system and they told the Commission they have got extra feet for their markets. Incidentally, besides all that, woven up with it is another application to export some to Windsor. They have opened the door. They have told the Commission there is a terrific demand for gas, and they added up the total and gave it to them.

Q And there is no reciprocal basis of any kind?

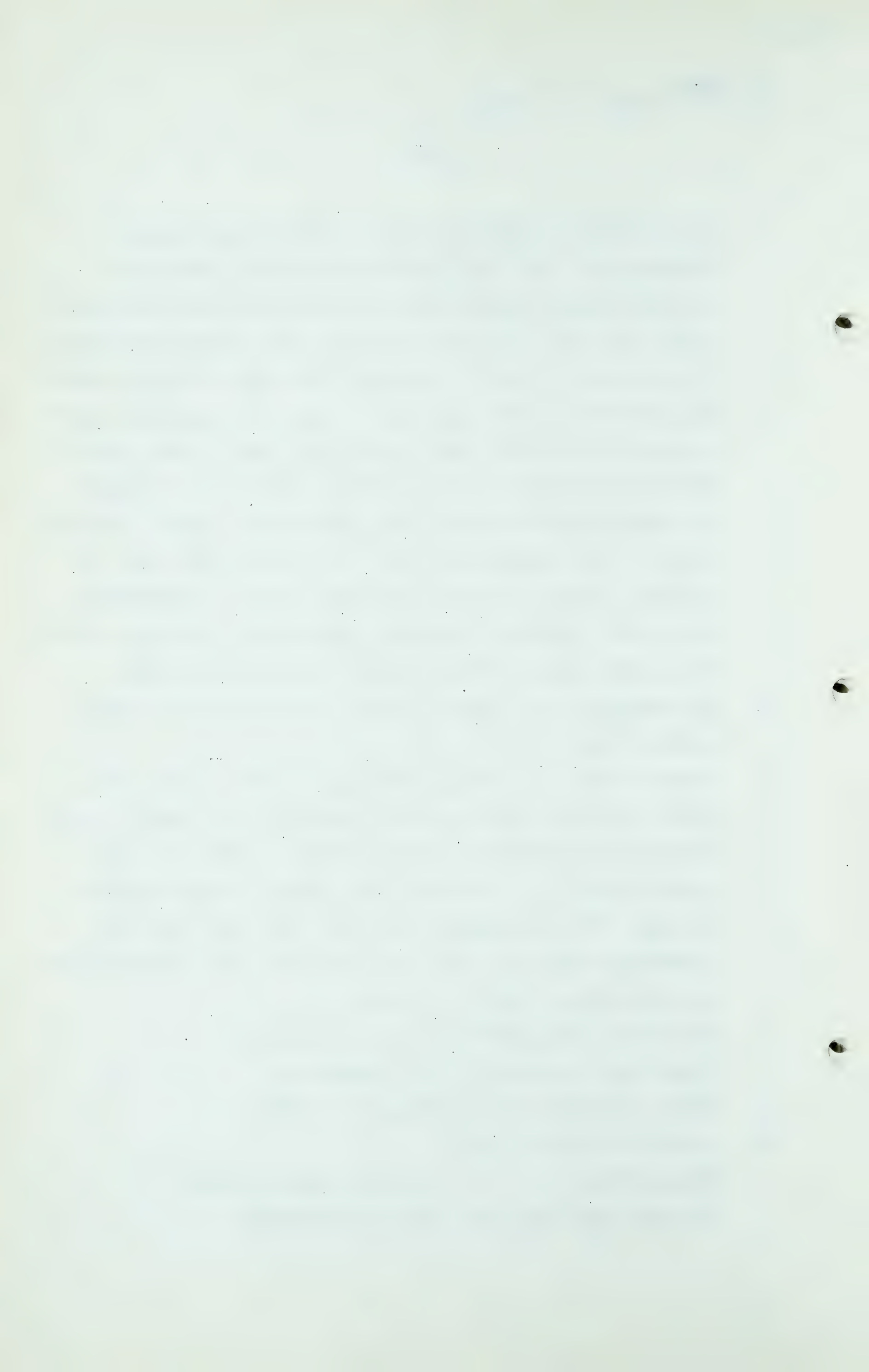
A There was no exchange in that whatsoever.

Q Would you answer other counsel, Mr. Arney?

A I would be glad to, sir.

THE CHAIRMAN: I think we might adjourn.

(The Hearing then took a short adjournment.)



Binford Arney,
Cr. Ex.by Mr. Nolan

- 2780 -

MR. NOLAN: I want to ask Mr. Arney one or two questions, but Mr. Smith is not here at the moment, and I am sure he would like to hear them.

THE CHAIRMAN: Yes.

CROSS-EXAMINATION BY MR. NOLAN:

Q Mr. Arney, let me see if I understand the situation which exists in the United States. And, first, may I ask you, is the Federal Power Commission a creature of the Federal Power Act? I mean, is that the Act that brought the Federal Power Commission into existence?

A That is correct, sir.

Q Is that right?

A That is correct, sir.

Q Now, Mr. Arney, if a company wants to build a transmission line in the United States, am I right in saying that they have to get a certificate of public convenience and necessity under section 7 of The Natural Gas Act?

A You are partly right and partly wrong. I will have to make an explanation.

Q Well, let us leave the right part alone, and just deal with the wrong?

A If it is a transmission line that is engaged in the interstate transmission, . . .

Q Yes?

A . . . of natural gas. . .

Q Yes?

A . . . for sale for public consumption. . .

Q Yes?

A . . . so that it comes within the definition of a natural gas company, then that company must obtain from the Federal

Binford Arney,
Cr. Ex. by Mr. Nolan

- 2781 -

Power Commission a certificate of convenience and necessity under Section 7(c) of The Natural Gas Act, for authorization to construct, operate and maintain those facilities.

Q Now, if this is a transmission line intra-state, what authority has to be obtained?

A That depends on the particular State we are talking about, sir.

Q Yes?

A But if it was merely intra-state and no sales or connections were made off that line into interstate, then it could be a matter beyond the jurisdiction of the Federal Power Commission, and subject only to the jurisdiction of the Commissions of the States under their statutes.

Q Whatever that may be?

A What ever that may be.

Q Now, then, Mr. Arney, if it becomes a matter of export or import, then we are driven to consider the authorization to be obtained under Section 3 of The Natural Gas Act?

A That is correct, sir.

Q But that is not the whole story, is it, because, as I think you have been telling us this morning, if it is the intention to construct, operate or maintain the facilities at the border for the importation or exportation of natural gas, into or from a foreign country, then we have to have something more, and that something is a Presidential permit?

A That is correct, sir, for the facilities themselves, that portion of the facilities that are on the International Boundary only.

Q Yes, all right. Now, the machinery for obtaining this Presidential permit is, as I understand it, and please



Binford Arney,
Cr.Ex. by Mr. Nolan

- 2782 -

correct me when I go wrong, is to make an application to the Federal Power Commission?

A For a Presidential permit.

Q Yes. I mean, we do not go to the President here?

A No, sir, that is filed with the Federal Power Commission. They are docketed.

Q And the Federal Power Commission, after hearing that application, may or would make a recommendation to the President for a Presidential permit?

A That is correct. That is only one recommendation that goes to the President, that is only one of the matters that the President considers, also the State Department.

Q Yes?

A And the War Department.

Q I was coming to them?

A They make the recommendations to the President.

Q Yes?

A If they know of any reason why the crossing should be at a different place.

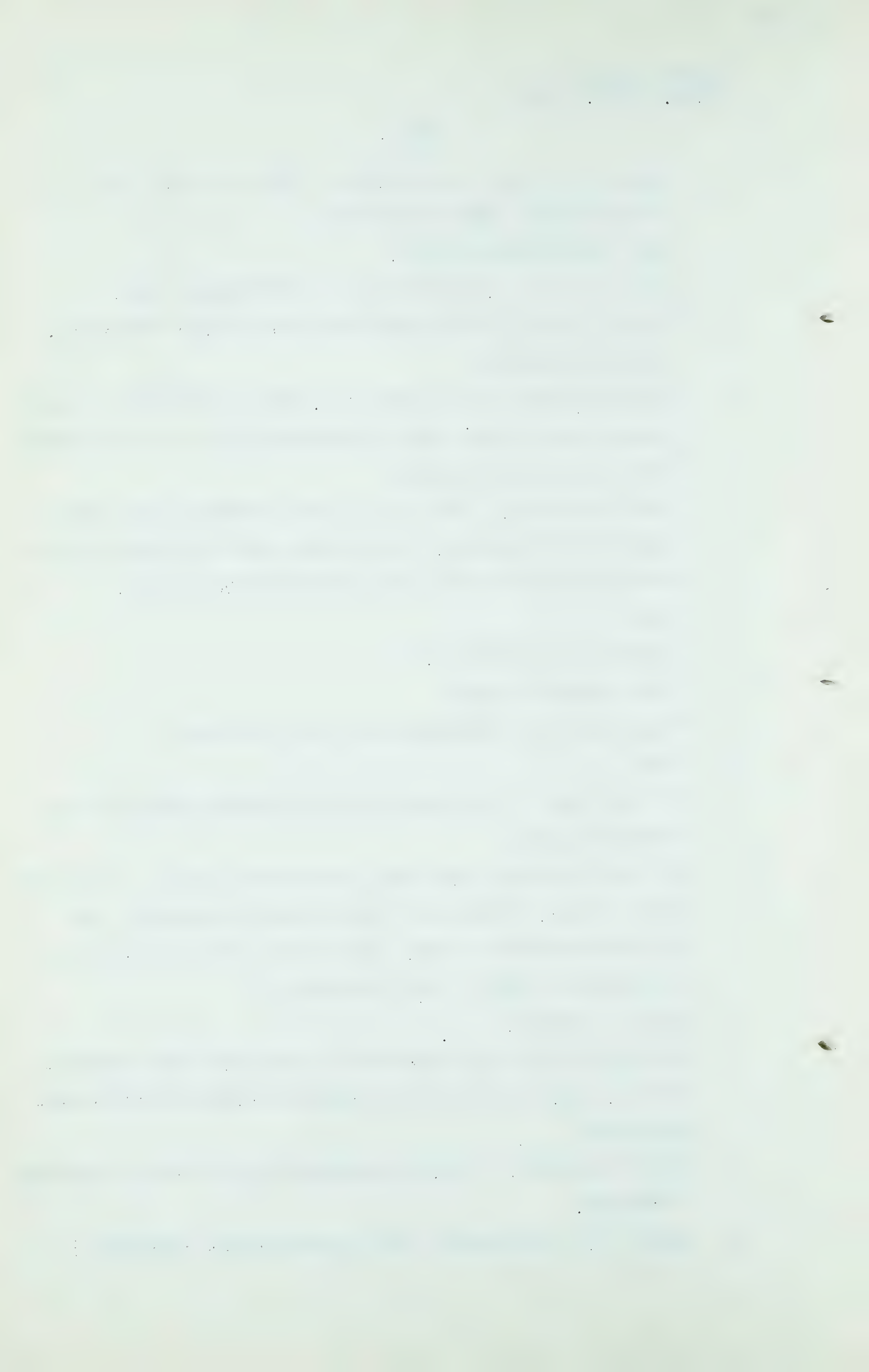
Q So that we really have three recommending bodies, do we not? First of all, we have the Federal Power Commission, and its recommendation on the application made to it for a Presidential permit, that is Number 1?

A That is correct.

Q And then we have the Secretary of State with his recommendation, and, thirdly, the Secretary for War with his recommendation?

A That is correct. Now, the purposes of the three are entirely different.

Q Quite so. But they are all required and are requested ?



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2783 -

before a Presidential permit will issue?

A That is correct, sir.

Q That is the machinery?

A Yes, that is correct.

Q Well, then, when you were making these applications for the export of gas into the Republic of Mexico, you were invoking this machinery to which I have been drawing your attention?

A I invoked that machinery, and my dealings were only with the Federal Power Commission.

Q Yes. Your dealings were only with the Federal Power Commission, because the recommendations of the Departments of State and War. . .

A Is an administrative matter.

Q And really are of no direct or immediate concern of yourself?

A Well, it was a very direct concern of mine what they might recommend.

Q But you do not appear before them?

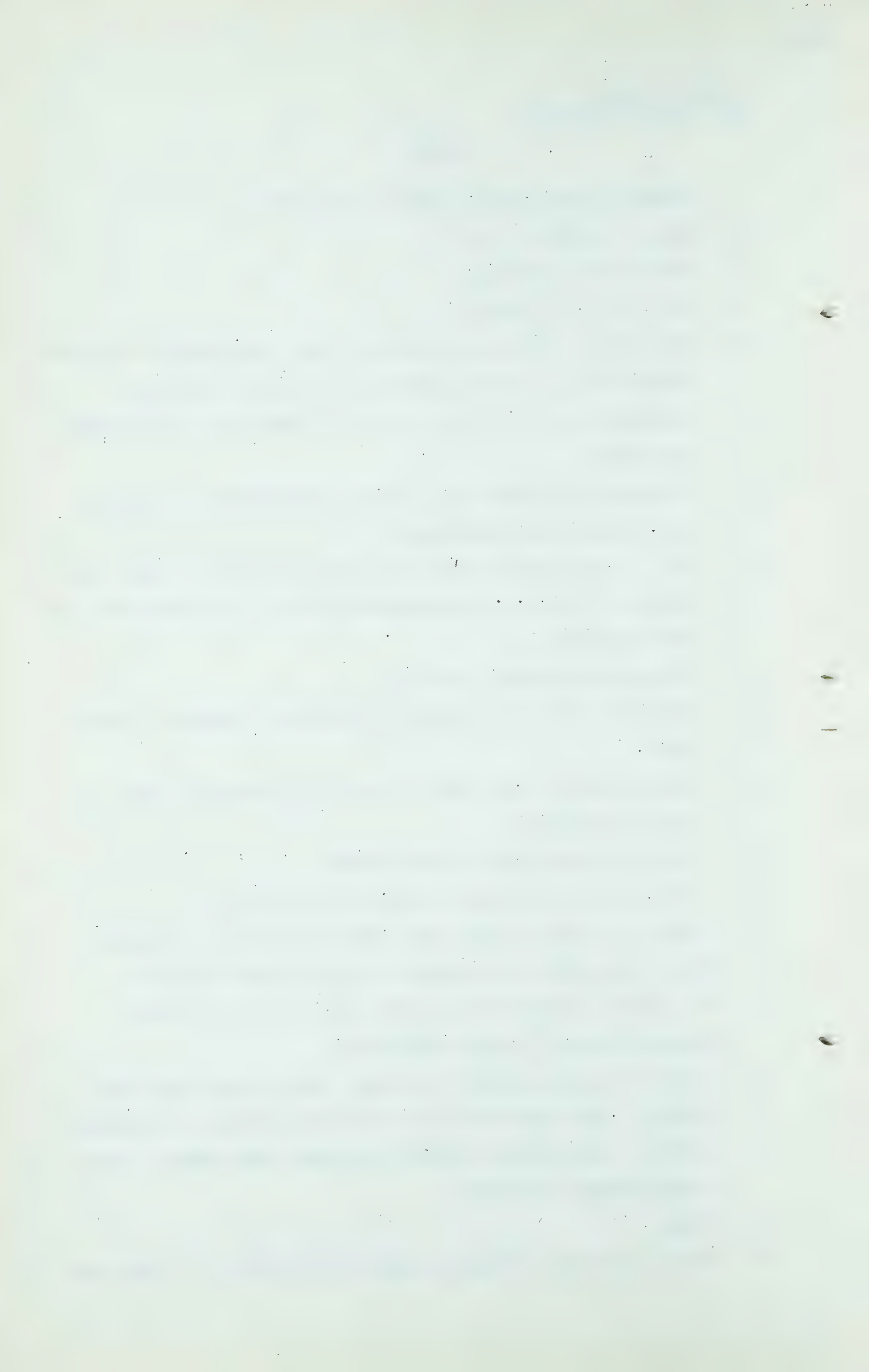
A I do not directly appear before them, no, sir.

Q And, as I said a moment ago, when you want to take gas into the Republic of Mexico, we do it under Section 3, 7, and the Presidential permit, those were the three recommendations I have enumerated?

A partly correct and partly wrong. When I took gas into Mexico I was concerned with Section 3 and the Presidential permit. When Border Pipeline took gas into Mexico, they were likewise concerned.

Q Yes?

A Now, if gas was obtained outside of the State of Texas and



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2784 -

crossed an interstate line going south, none flows south to this date, it all flows north?

Q Yes?

A But if it did do that, then you would also be under 7(c).

Q Yes?

A But solely an exportation from a point in the State of Texas crossing the Rio Grande into the Republic of Mexico, Section 7(c), under the current decisions of the Courts, would not be necessary.

Q So that it depends on the nature of the transmission line and its operation as to whether 7(c) is necessary or not?

A Correct, sir.

Q I think I understand that. And am I right also in saying that there is an Executive Order, and I think you mentioned it, dated the 13th of July, 1929, Number 8202, which authorizes and requests the Federal Power Commission to receive applications for permits for the construction, operation and maintenance and connection at the borders of the United States, or facilities for the transmission of electric energy between United States and foreign countries, and for the exportation and importation of natural gas to and from foreign countries. That is the blanket Executive Order?

A Yes. It is 1939 instead of '29. You said '29.

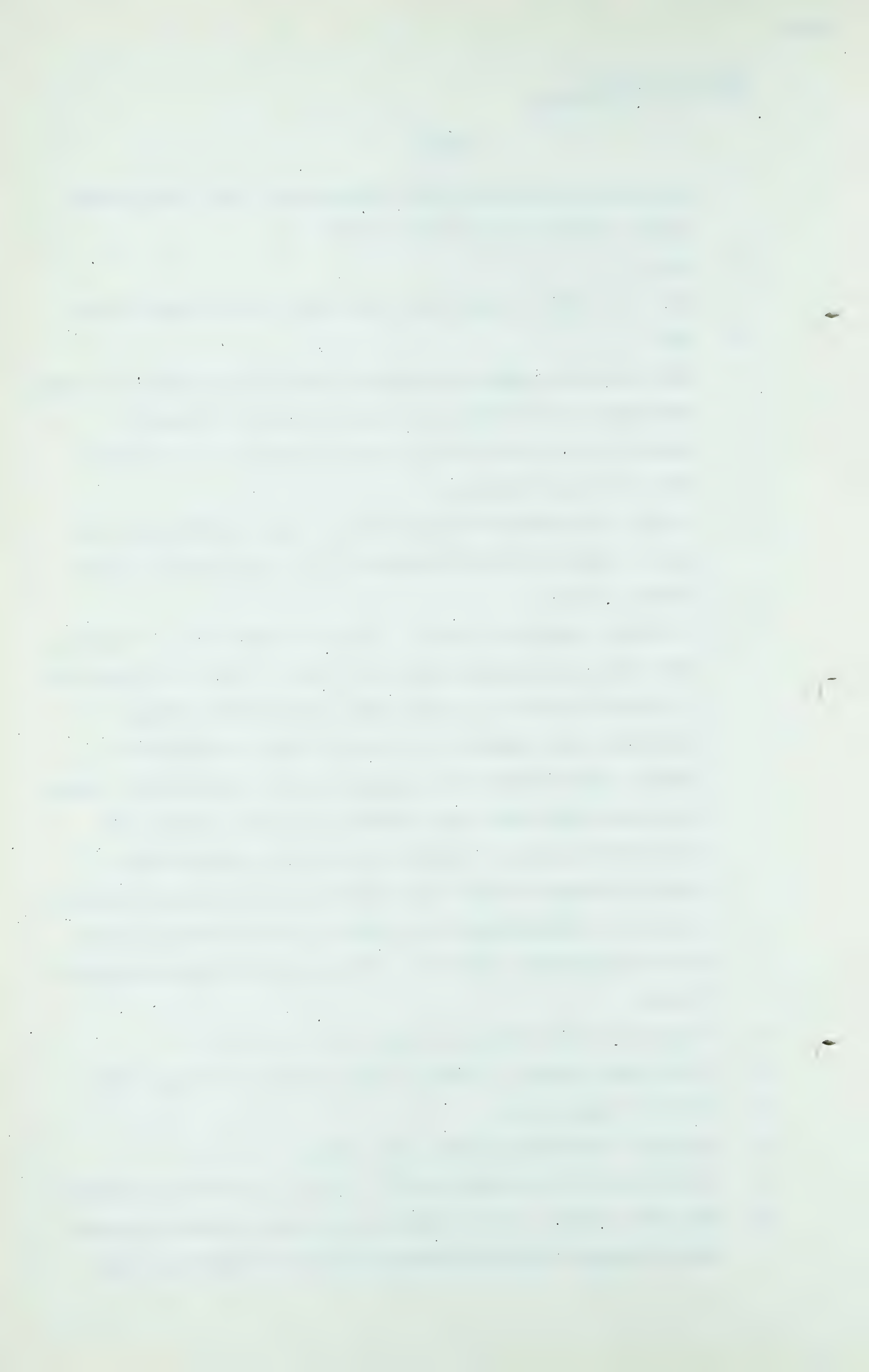
Q I beg your pardon. I meant to say the 13th of July, 1939.

A That is right, sir.

Q And that is still in force and effect?

A To the best of my knowledge it is still in force and effect.

Q Now, Mr. Arney, you are familiar with the proposed arrangement between Pacific Northwest Pipe Line Company and the



Binford Arney,
Cr. Ex. by Mr. Nolan

2785 -

Panhandle Eastern Pipeline Company?

A I am to the extent that it appears in your record here from testimony of one Hearing.

Q Well, that is all I know about it, too. But there are two exhibits, Number 94 and 95, and Number 94, I think, Mr. Smith, is the Humble letter and 95 is the Panhandle Eastern letter.

MR. C. E. SMITH: 95 and 96.

MR. S. B. SMITH: Exhibits 95 and 96, Mr. Nolan.

MR. NOLAN: I beg your pardon, 95 is the Panhandle Eastern letter, and I have not it before me, but Humble is 96.

Q Mr. Arney, you were here this morning when I asked Mr. Keefe some questions about this Panhandle Eastern proposition, were you?

A I was, sir.

Q You remember I read to him that one of the conditions that had been laid down for the Panhandle Eastern Pipeline Company was that an acceptable treaty be worked out between the United States and the Canadian Government, permitting such transportation and sale of gas for a period of not less than 20 years?

A Could I see that letter, if you are going to ask me about it?

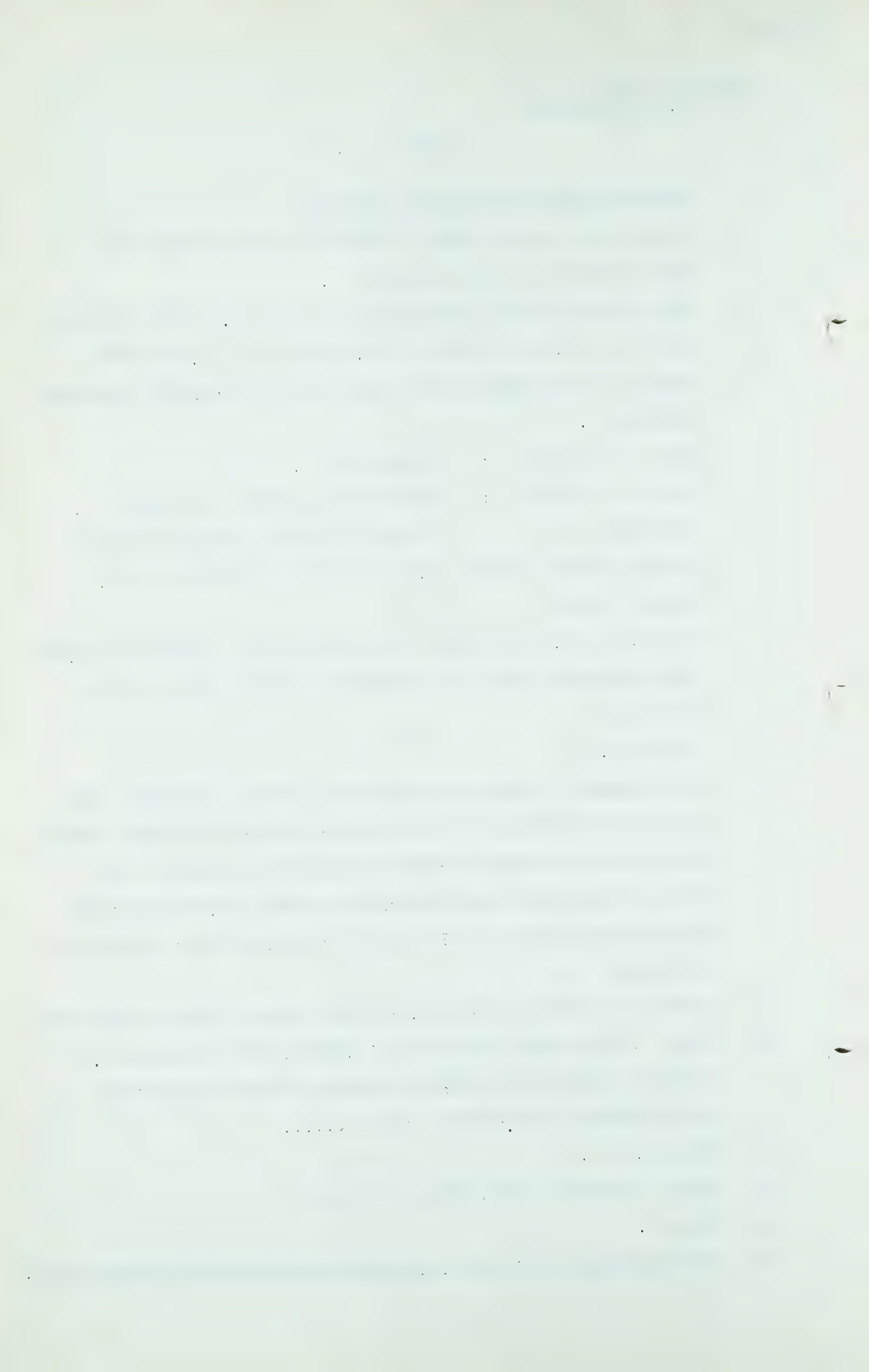
Q Yes. If you will look at it, halfway down the page, you will see these words, "This proposal is made subject to the following conditions: (a)....."?

A Yes, sir.

Q Well, you might just look at (b) too?

A Yes.

Q That provides for F.P.C. approval and certificates authorizing



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2786 -

the sale; and (c) that proper United States Governmental authority be obtained for the acquisition of pipe, etc. However, it is (a) that I am concerned with at the moment. Now, you have had a lot of experience, I take it, from what you told Mr. Smith, in applications for the export of gas? Well, perhaps not a lot of experience, there have not been a lot of cases of export, but you have done considerable work in connection with one or two of those?

A Yes.

Q Now, have you had any experience in working out treaties between the United States and the Canadian Government with respect to the transportation of gas from one country to the other?

A May I answer that in this way, sir?

Q Any way you like.

A In my opinion, no treaty is necessary to export gas from the United States into a foreign country as far as the law within the United States is concerned.

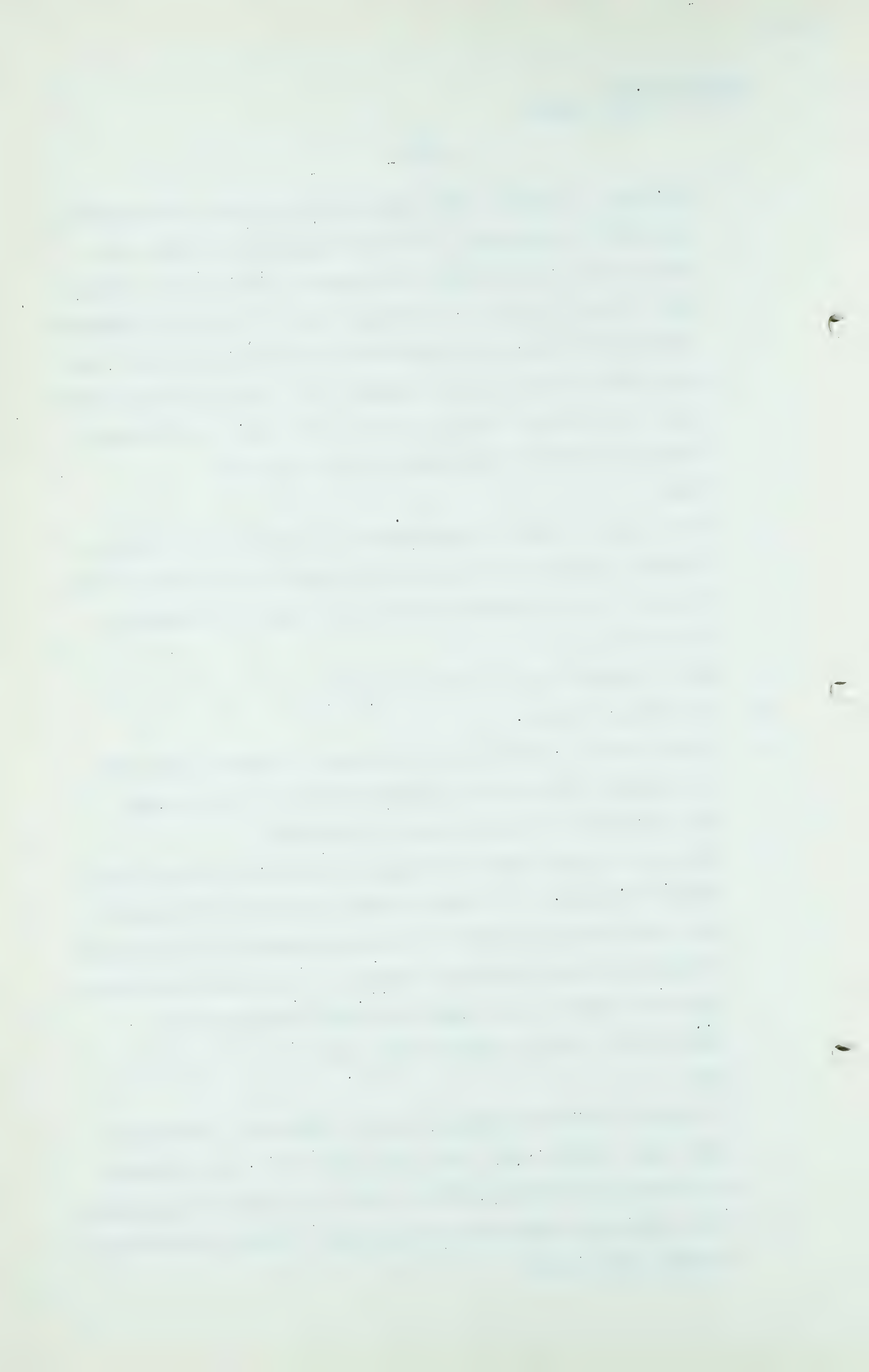
Q Well, if we just forget the law of the United States for a moment Mr. Arney. I think you will agree with me that it is a condition precedent to the arrangement to be made with Panhandle Eastern Pipeline Company, as disclosed in Exhibit 95, that there be an acceptable treaty entered into?

A Well, let me see if I understand you.

Q Yes?

A I thought you were asking me for my experience, whether I have ever worked at it, and I may say that I have advised my clients in the United States that no treaty is necessary.

Q Well, then, you could not have been the adviser of Panhandle Eastern, could you?



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2787 -

A Well, I am not, sir.

Q But they do want a treaty, don't they?

A Well, I don't know, sir.

Q Well, if you will read paragraph (a), you will see that they do.

A I see they use the word "treaty".

Q Yes.

A Now, I do not know whether they are talking there about a formal treaty, or whether when they use the word "treaty" in this letter, it is to be made more definitive, or they may mean of having some way of showing official sanction. They might be referring to a formal thing, and they might be referring to an informal sanction, showing that there was no opposition from either Government.

Q Can you tell me of any better way of showing the sanction of two Governments than by an executed treaty?

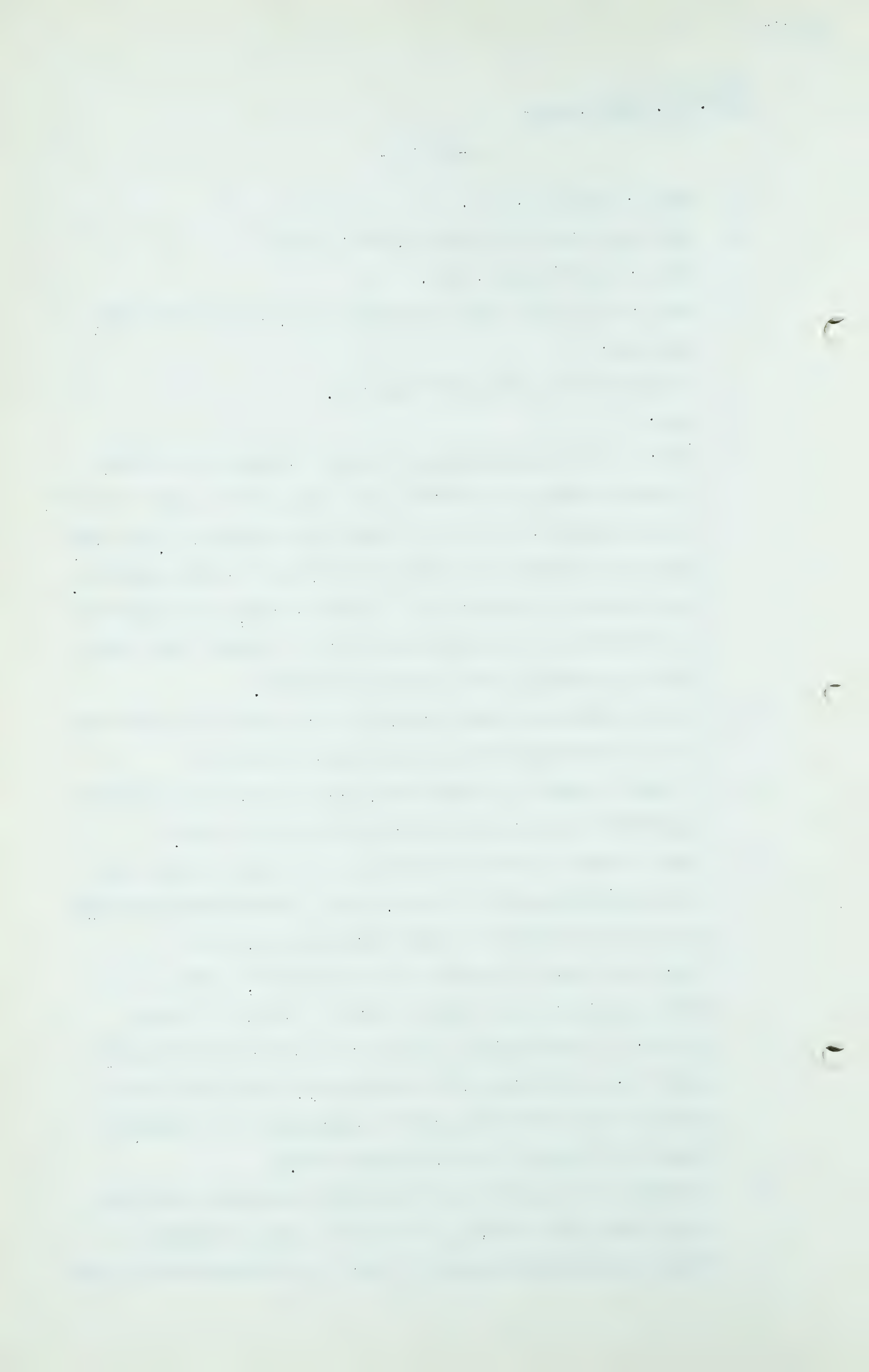
A I cannot think of a better one, but I can think of a more expedient one to get a job done in point of time.

Q That is what is bothering me so much, because they are only getting gas for 20 years, and I am wondering whether we can get a treaty through within that period?

A Well, you know, my answer to that would be, that if I were asked or called upon to advise either of these parties, I would advise them to dispense with that paragraph (a), as being wholly unnecessary, and they being parties that have had a lot of experience in business, I think that might be the expedient thing.

Q Because you would be quite seriously concerned about the delay that might ensue, if we had to have a treaty?

A What I am concerned about is that is an element you do not



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2788 -

need at all.

Q But if any one of these parties insisted upon it, there would be an inevitable delay, in your opinion?

A I am not competent to answer how soon any person can get through a treaty, if it is a matter that is firmly desired by both Governments. I could foresee that it could be expedited and accomplished in a short period of time, and then again it might be something that would take a long time.

Q Do you remember some years ago both of our countries were interested in the salmon fisheries and a treaty was sought by both countries?

A You are outside of my field entirely now.

Q It is, perhaps, before your time, and I won't press you on that. But you will go this far, won't you, Mr. Arney, that if the Panhandle Eastern insists upon a formal treaty, worked out as between Canada and the United States, and that treaty cannot be worked out, then this whole project falls to the ground?

A I would not concede it could not be worked out formally. I would concede on your premises that if they had to have a formal treaty and they could not get it, there would not have been made that condition.

Q That condition is a condition precedent to Panhandle Eastern Pipe Line entering into this undertaking?

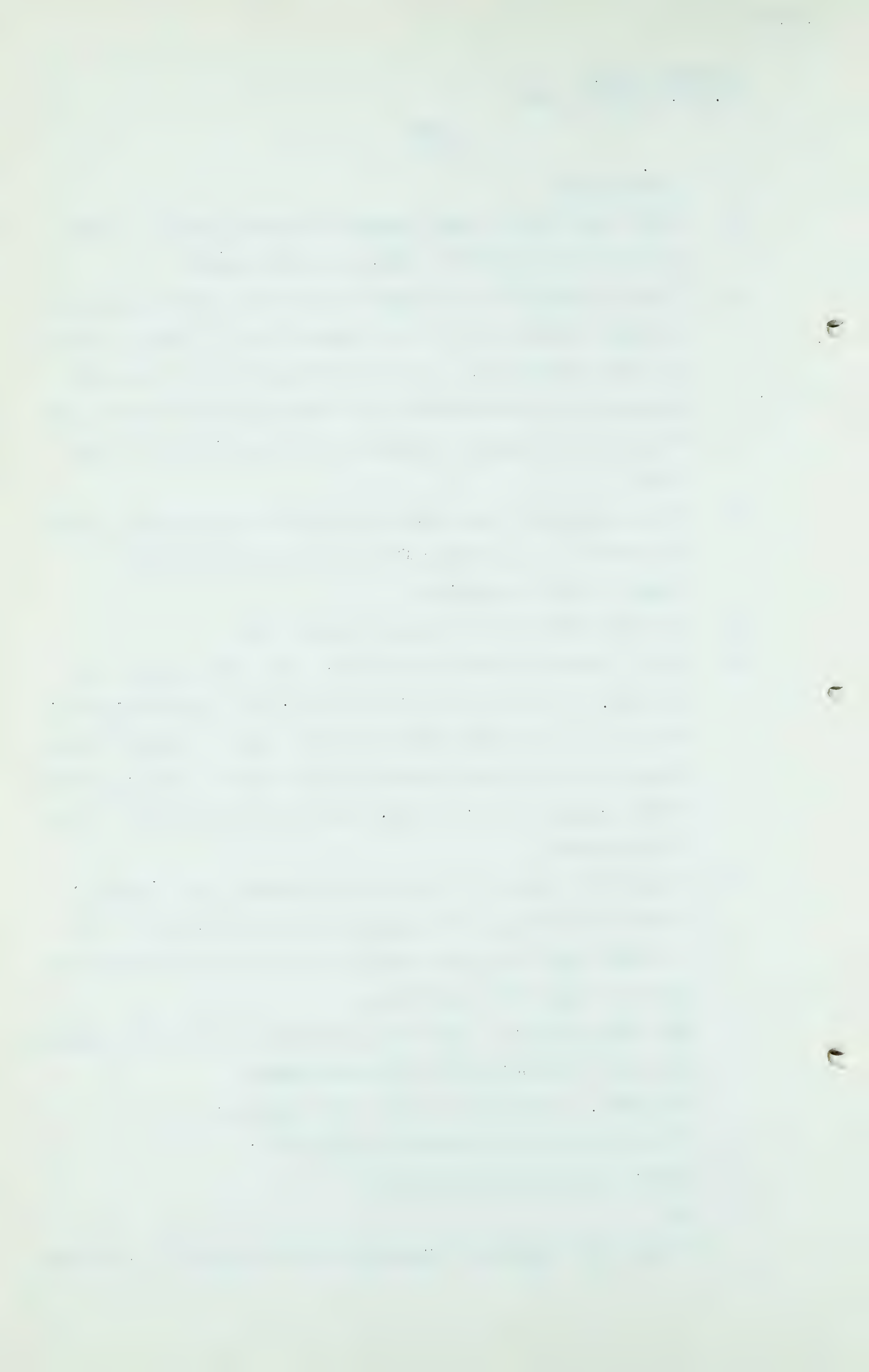
You know, I would like to make one comment.

Q I would like you to answer the question.

A Didn't I answer your question?

Q No?

A I meant to. Would the reporter read it back to me, please?



Binford Arney,
Cr. Ex. by Mr. Nolan

- 2789 -

BY THE REPORTER: "That condition is a condition precedent to Panhandle Eastern Pipe Line entering into this undertaking?"

A In this letter, until amended, it is a condition, the way it reads.

Q Yes?

A If they mean a formal treaty and not merely a sanction.

Q All right, thank you.

Q MR. S. B. SMITH: Do you want to add something to your answer, Mr. Arney?

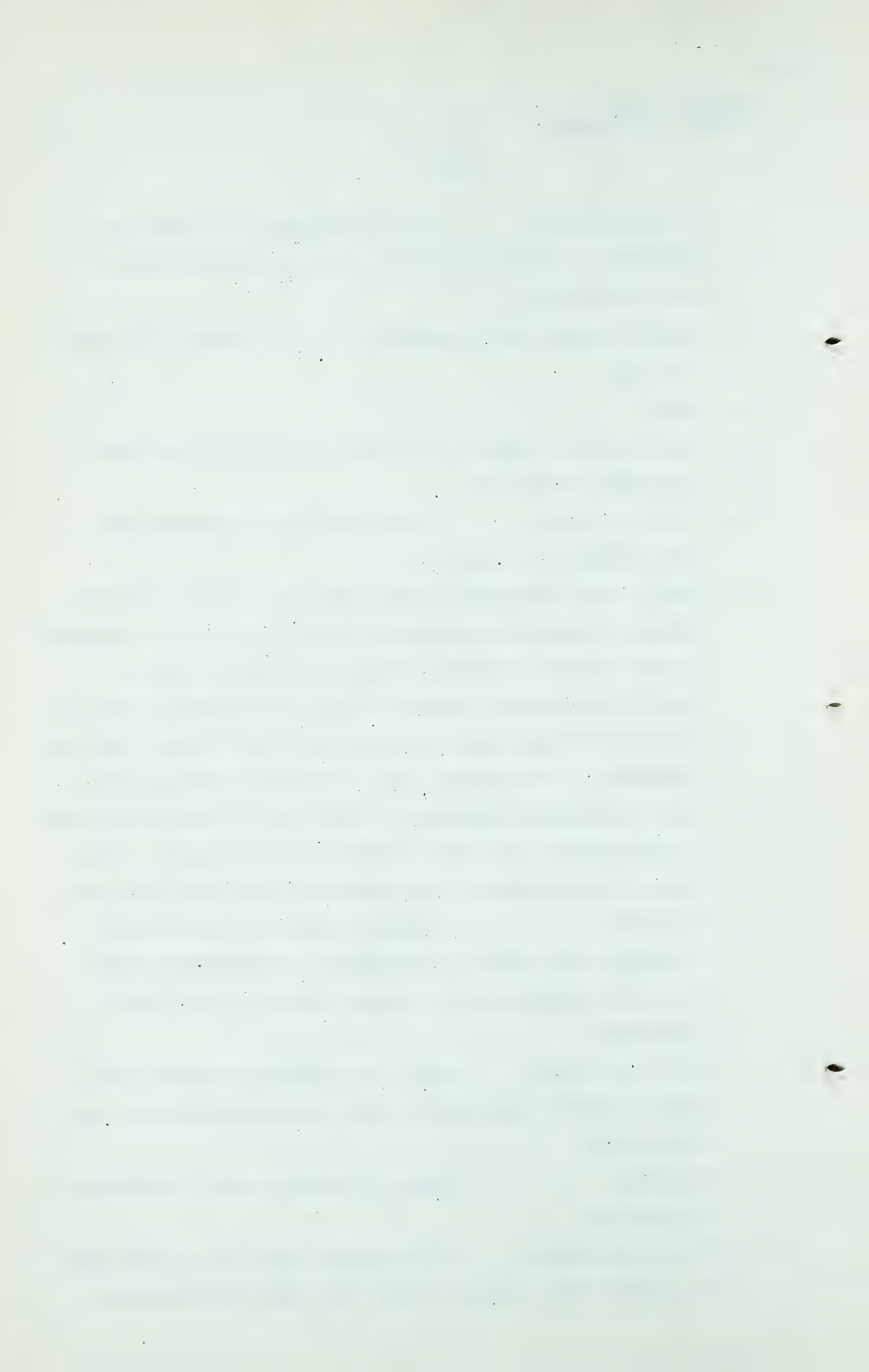
A Well, I was just going to say that, and I think everyone knows, it would take someone who had to do with the writing of this letter to explain whether it was put in as a possible protective covenant, being unfamiliar with what it did take to export gas, or whether it was a formal condition precedent, I do not know, but I do want to make it clear that no treaty is necessary at all, and if both parties want to get together and make an agreement, assuming it can be done, I do not know of any proceeding which would bar that.

MR. NOLAN: Perhaps I should ask Mr. Smith if a witness will appear to interpret this document, Exhibit 95, to see whether it is a formal treaty or not that is requested?

MR. S. B. SMITH: Well, I am afraid my answer to Mr. Nolan is that I am going to call only witnesses that I see fit to call.

MR. NOLAN: That, of course, is not an answer to my question.

MR. S. B. SMITH: I do not know that I am called upon to answer your question, unless the Board directs me to.



Binford Arney,
Cr. Ex. by Mr. McDonald

- 2790 -

MR. McDONALD: Mr. Chairman, I was just wondering
if I could ask Mr. Arney a few questions?

THE CHAIRMAN: Yes.

.....

CROSS-EXAMINATION BY MR. McDONALD:

Q Mr. Arney, you mentioned a number of cases of export of
gas from Canada to the United States that you were person-
ally concerned with?

A Not Canada.

Q I am sorry, from the United States to Mexico?

A That is correct, from the United States to Mexico.

Q Now, a number of orders were granted?

A Yes.

Q And some Presidential permits were put through?

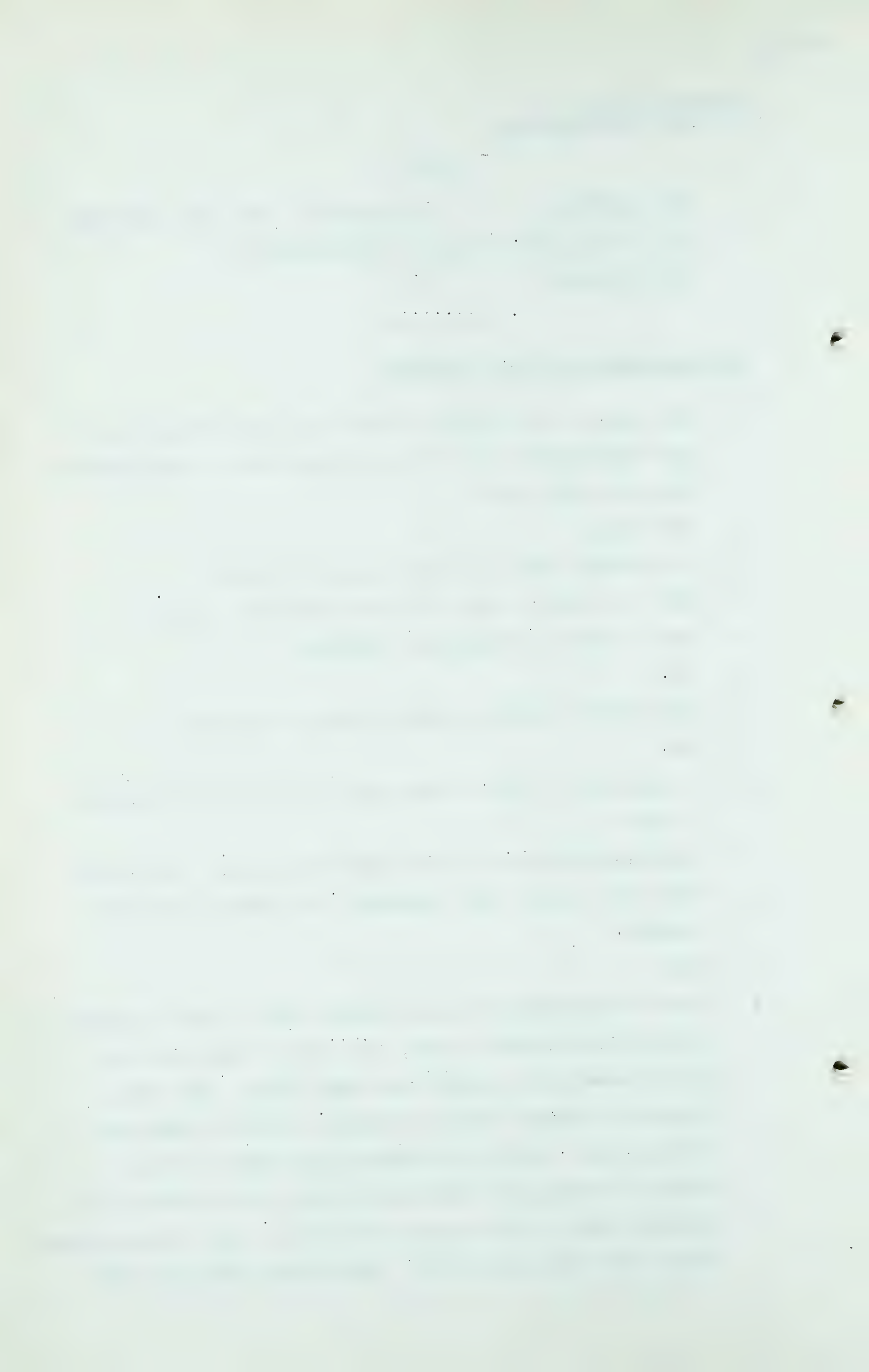
A Yes.

Q Do you know if any of those services have been terminated
or not?

A The Reynosa service has not been terminated. The Border
Pipe Line has not been terminated, the Border Pipe Line
service.

Q Yes?

A I have been advised that the United Gas Pipe Line exporta-
tion to Cia Mexicana de Gas, S.A., which takes place on
the International boundary near Roma, Texas, that that
contract to export was not renewed, and the Cia Mexicana
de Gas, S.A., instead of obtaining gas from the United
States is taking gas from some recently found fields in the
northern part of the Republic of Mexico. Now, I believe that
that is the situation, sir. One of the services, after



Binford Arney,
Cr. Ex. by Mr. McDonald

- 2791 -

having fulfilled its term as authorized by the Commission, was not renewed, with the other still pending.

Q Could you tell me this also, these applications for export from the Texas area to the United States, I think all of them had to do with the export of reserves from Texas that were not then required for the United States purposes, or local purposes in the State of Texas? The Reynosa, was that from the field, or from a field that did not otherwise have a market?

A Your question is not just exactly right.

Q The Reynosa Company had available gas from some source?

A That is correct.

Q Yes?

A But to say that all of those are - I do not know just what you mean by your question there.

Q Let us just deal with Reynosa at the time you were employed, and went to get your permit, was the reserve from which you were going to take your gas from Texas to Mexico then a source of supply for any United States consumers?

A It was not under contractual commitment of any United States interstate pipe line company at that time.

Q No. And so it was free from requirements of any consumer in the State of Texas at that time?

A It was free from any commitments for an additional use at that time.

Q Yes. And the Federal Power Commission made a specific finding that it was not inconsistent with the public policy of the United States to allow that?

A Correct.

Q And, as you told us now, that is still in force and the

Binford Arney,
Cr. Ex. by Mr. McDonald

- 2792 -

reserves are still being tapped and transported to Mexico?

A Correct.

Q And in that Border pipe line, do you know anything about that particularly? That was the American Smelting & Refining Company, wasn't it?

A Yes, I am generally familiar with it.

Q And that was an order for a specific period of time, for a period of five years, was it not?

A It has been continued since then.

Q It has been continued since then?

A Yes.

Q I was going to come to that. It has been continued?

A Yes.

MR. McDONALD: Mr. Chairman, we have heard reference to these Orders in the United States and these cases in the United States. The Board knows that the Natural Gas Commission did sit here some years ago, and it was also interested in this question of the export of natural gas. At that time, as counsel for the Commission, I employed Mr. Shattuck, who was a witness here the other day, to attend at the Federal Power Commission and to photograph some Orders, make some photostats, and he selected Orders of the Federal Power Commission dealing with the export of gas from the United States, and we can incorporate them into an exhibit, and to present the exhibit to the Commission. It contains a lot of useful material, contains references to the Executive Order No. 8202 signed by Franklin D. Roosevelt, and it outlines the procedure of the Federal Power Commission in dealing with export. It also refers to the Reynosa Company, the Reynosa case, which Mr. Arney referred to, which was

Binford Arney,
Cr. Ex. by Mr. McDonald

- 2793 -

appealed and the Court denied the petition.

Q That was true, was it not, Mr. Arney?

A The Court upheld the export authorization issued by the Commission.

Q Yes?

A And refused to set it aside.

Q The appeal was from the Order?

A Yes.

MR. McDONALD: And then it continues with the Panhandle Eastern, with regard to the Union Gas Company, and it was restricted to the actual photographs of the Orders that are on file in the Federal Power Commission. It might be of benefit to the Board to have this file. I do not intend to call Mr. Shattuck to prove it. If the Board would desire to have these filed, I will be glad to.

MR. S. B. SMITH: I am not objecting to the material going in, but I suggest that there is a proper way of getting it in, if Mr. McDonald wants to get it in. I have brought Mr. Arney here from Texas to give expert evidence on the question of law, and I suggest that Mr. McDonald can do something like that if he wishes to get that in.

MR. McDONALD: All right, we will put it in right now.

Q Are you familiar with the Reynosa case?

MR. S. B. SMITH: You are putting in what right now?

MR. McDONALD: The Order.

MR. S. B. SMITH: Well, sir, I am going to object to any conclusions of opinions of Mr. Shattuck being put in at this stage.

Binford Arney,
Cr. Ex. by Mr. McDonald

- 2794 -

THE CHAIRMAN: It is an Order that Mr. McDonald wants to put in.

MR. S. B. SMITH: I am not objecting to the Order if Mr. McDonald will segregate it from the rest of the material.

MR. C. E. SMITH: In the meantime, would anybody object if I were to ask somebody to put in The Natural Gas Act, which was discussed? Has anybody got it convenient?

MR. S. B. SMITH: I borrowed Mr. Martland's, sir.

THE WITNESS: I have a copy on my desk.

Q MR. C. E. SMITH: Do you have an extra one?

A I have not an extra one, I have one here.

Q Can it be marked?

A I promised my copy to Mr. Bruce Smith, and I was going to leave it here.

MR. S. B. SMITH: I will give that one up.

MR. McDONALD: I wanted to get in, Mr. Chairman, all I wanted to get in was this Docket G-595, In The Matter of The Reynosa Pipe Line Company, Opinion No. 135, June 6th, 1946, an Order authorizing the export of natural gas from the United States to a foreign country.

Q Now, Mr. Arney, if you will read this Order and tell me if you think it is a copy of the Order which you referred to? Just that one there (indicating)?

A This one (indicating)?

Q Yes. This is not a signed copy, unfortunately.

A Well, this is not signed, but it authorizes the exportation and without being able to compare it I am perfectly willing to assume it is. I don't know how it came into your hands.

Q The only point I have in mind, Mr. Arney, is if you would

Binford Arney,
Cr. Ex. by Mr. McDonald

- 2795 -

turn to paragraph (e).

A Paragraph (e)?

Q Yes, in the Order?

A Yes.

(Go to page 2796)



Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2796 -

Q Do you recollect that one being in the order?

A Yes, sir.

Q That was different. That is a standard form of paragraph in many of these orders, or most of these orders?

A No, it isn't, sir.

Q It is not?

A No, sir. Paragraph "E", this is the first exportation order that that ever appeared in, sir.

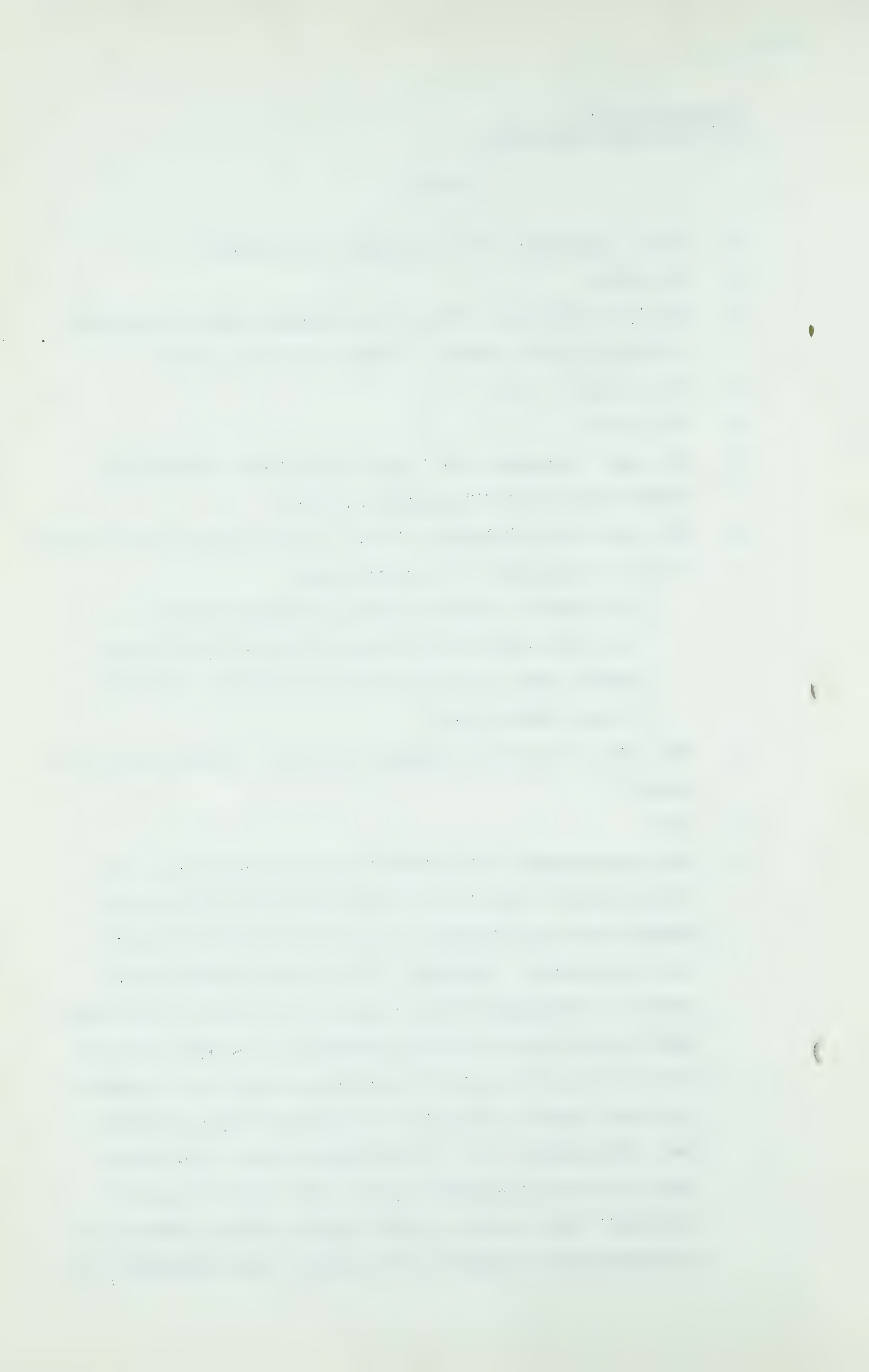
Q Yes. And the latter part of it, I was referring particularly to the latter part of it, which says:

"It being the intent of this authorization that at all times, persons in municipalities in the United States shall receive preferential service over that of gas industrials."

A Yes, sir. I see the language you refer to which was in the order.

Q Yes?

A And they approved the contract for the export up to 50 million feet a day over the firm period of the contract. Having been once approved, we are authorized to export the full amount. Paragraph "E" does not change that in any way. Paragraph "E" was placed in in order to indicate that in the future in making additional contracts that we should not use the tie-in for foreign export as an excuse if we had surplus gas and if we wanted to sell, tried to deal with someone else. This Reynosa case, to my knowledge, is the only foreign export case that was really contested. As a result of the contest and the issue in the Hearing the Commission did include your paragraph "E",



Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2797 -

but you will notice when you read the order in its entirety that all its subsections that we are in no way prevented, once having received the authorization, from making the full export authorized.

Q Well, then, the net effect of it is --

A And that has not been in any of the others.

Q The net effect of it, as I understand your evidence, is that the exporter Reynosa in this case is authorized to deliver the gas in accordance with the contract which is approved, but if they had any gas over and above the demands of that particular customer they then would have to make that available to consumers in the United States if the application was made to it.

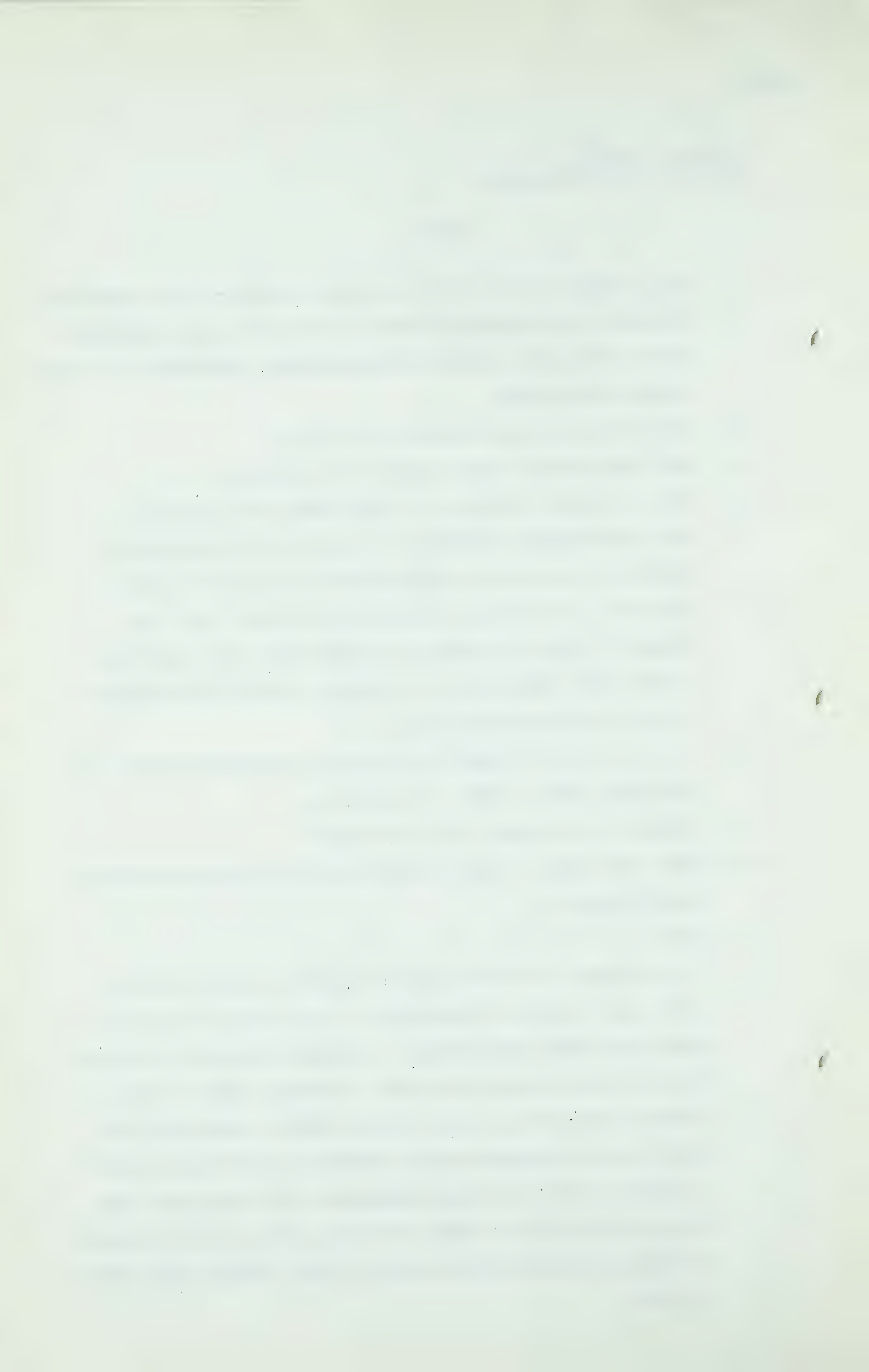
A We do not have to make it available to anybody unless our producers want to make it available.

Q Subject to entering into a contract?

A What this says is that you come down to me and you want to buy some gas --

Q Yes?

A -- I can say, "I don't like the colour of your eyes, I don't want to sell it to you," or I can say, "I have already made some other plans." All the Commission told me here was that I could not give a foreign export as the reason to say, "Oh, sure, I would like to deal with you but I can not because we are involved in foreign export." I think the effect of your paragraph "E" is nothing, but they did not want us using the excuse that we are engaged in foreign export as the reason for not dealing with other parties.



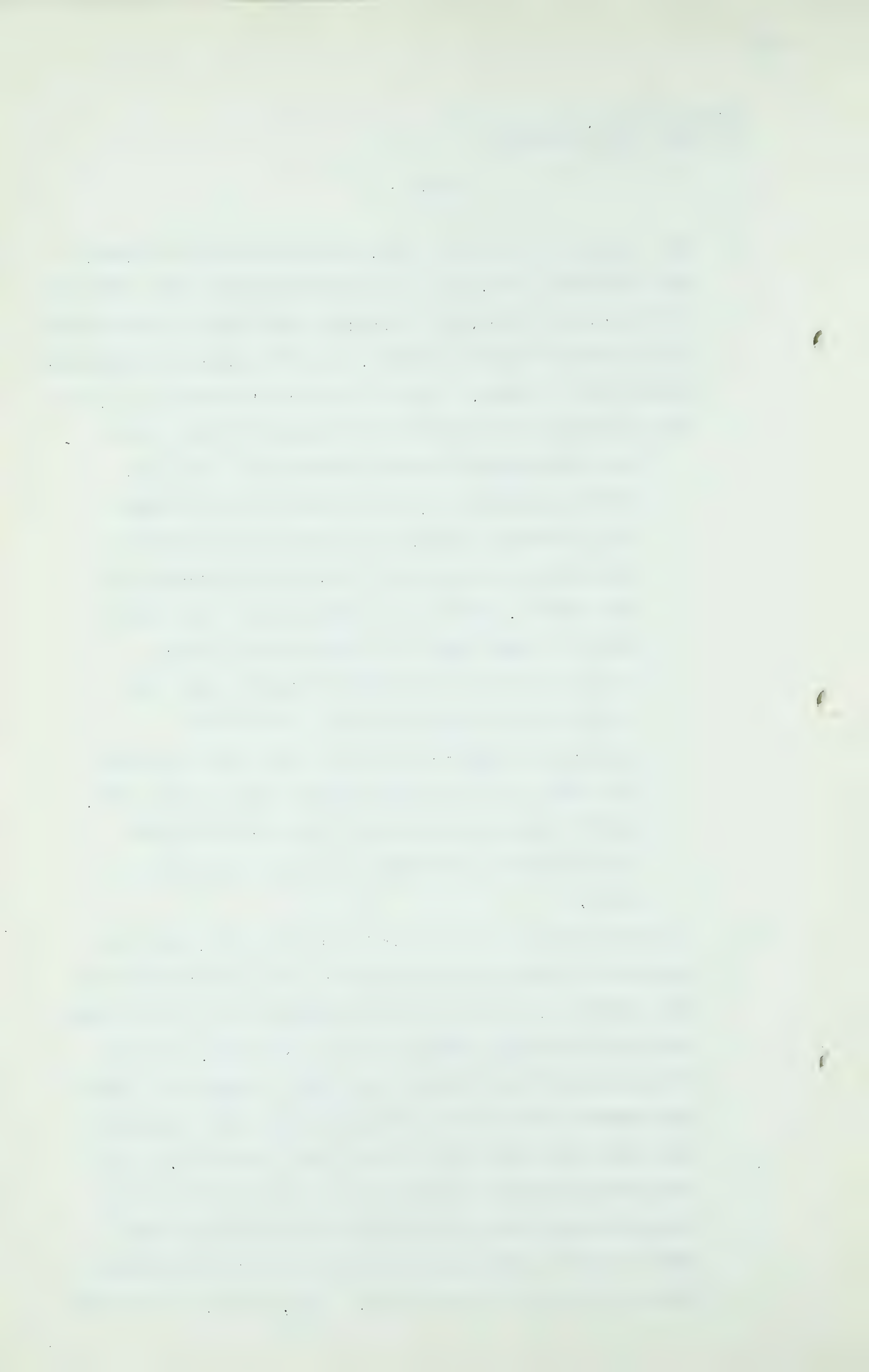
Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2798 -

Q Let us put it this way, then, the same wording is used, I am interested here, take the Panhandle-Union, the order in the Panhandle-Union, the Panhandle application of the Union Gas Company of Canada Limited, the order granted in 1946 and in Exhibit 9 it was, it was Mr. Brownie's Exhibit 100, the same paragraph, Section "E", is included in the order:

"The authorization hereby granted shall not constitute grounds or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time during the term hereof, either for consumption in the United States by such person or municipality, or for storage, or for re-sale for ultimate public consumption in the United States for domestic, commercial, industrial or any other use, it being the intent of this authorization that at all times, persons and municipalities in the United States are to receive preferential service over that to Union."

A I think you will find on your Union case, sir, that the original contract there was what we call an interruptible sale, which is, in my opinion, different from the contract like you are talking about in this proceeding, by which it would have to be firm for 20 years, wherein the Commission members will not authorize the gas to go out unless they knew the like quantity was firmly coming in. I can not compare Panhandle saying that at certain months of the year we may have a little surplus gas near Windsor that we can put over for you and you take it and we can cut you off at any time we want. That, to me, is not the



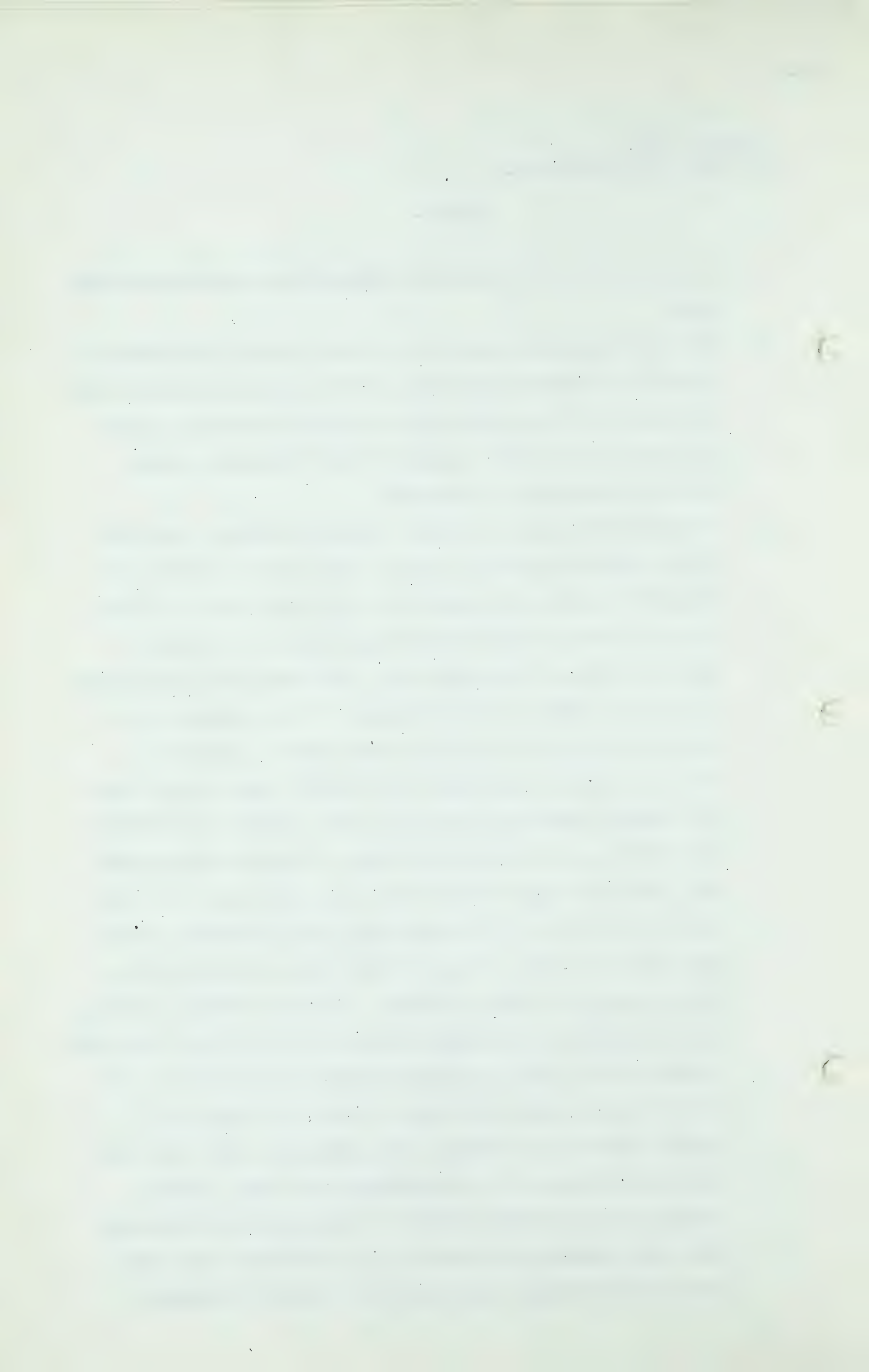
Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2799 -

situation of this reciprocal agreement we are talking about here.

Q Am I to understand that, as you told us about the Mexican situation, that the paragraph in the Reynosa order, you did not consider it of any practical effect? Are we to take the same attitude with regard to this Panhandle order, which is practically identical?

A I am perfectly free to draw a conclusion where I am thoroughly familiar with the facts in the case. I would not attempt to draw a conclusion as to all the facts involved in the record in the Panhandle case as to the effect of that provision. Any export case from the United States has to be considered on its own facts. To say whether something is going to be done we would have to presume a certain record. Now, there is no doubt under the law that our Federal Power Commission can make certain restrictions and alterations in the certificates, they have that power. Now, they put those restrictions and conditions in if they reach that that is to the advantage and consistent with the public interest. Now, how that may have been with a small quantity of gas at Windsor, in your instance probably I am assuming that the Eastern would not put such restrictive covenants in or that the parties would say "no deal". It is one thing to have your line all paid for and going through Detroit and having some surplus gas that you could put over the line. It is something else when you are talking about spending millions of dollars and building a line from Windsor on through to your Provinces and other millions of dollars out here in the Pacific Northwest.



Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2800 -

You can not finance unless you have a firm commitment.

It has been my observation that the Federal Power Commission, on a given set of facts, are men with broad vision and they reach conclusions which are to the benefit of everyone concerned. I think we are foolish to try to take those small things that have happened in the past and compare them with a reciprocal agreement.

Q I just wanted to have your views on those two arrangements.

A Can I say this one other thing?

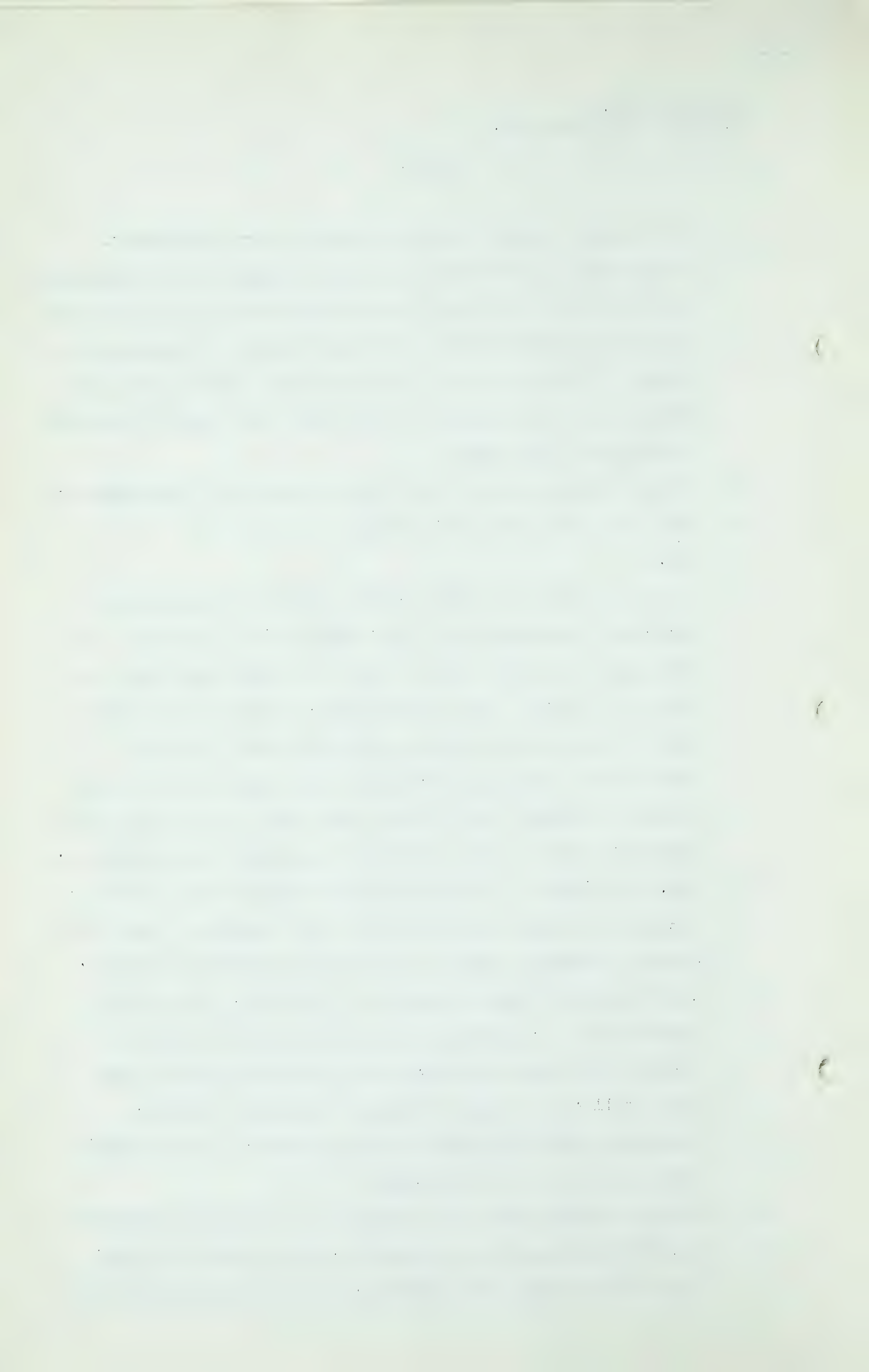
Yes.

A I do not think our Federal Power Commission would like a reciprocal agreement that your Commission in Alberta could terminate. If they were to rely on it they would want to know it is firm. Just the same way, I think your Commission in making a reciprocal agreement would not do it unless they could unconditionally rely that it was a firm export to Windsor, and I think that would be the basis that probably would be put up and would probably be resolved on.

Q Now, as I take it, this reciprocal situation you refer to, really, it evolves something into two elements. One is the Western situation and the other is the Eastern situation. As I understand your situation in the East, you have the exportation of gas which it is presumed will be passed through some areas in Canada which have not gas now and which will not get gas unless the pipeline is built, unless the American market is also served. Do you understand that to be the situation?

A You are talking about the situation in the United States?

Q No, the building of this pipeline, this reciprocal pipeline of which you were speaking, the pipeline from Alberta



Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2801 -

to the United States would only be built providing it can also serve United States' markets in addition to Canadian markets?

A I understand the plan of what I call your western pipeline is to serve joint communities within the United States and other communities within the Dominion, is that it?

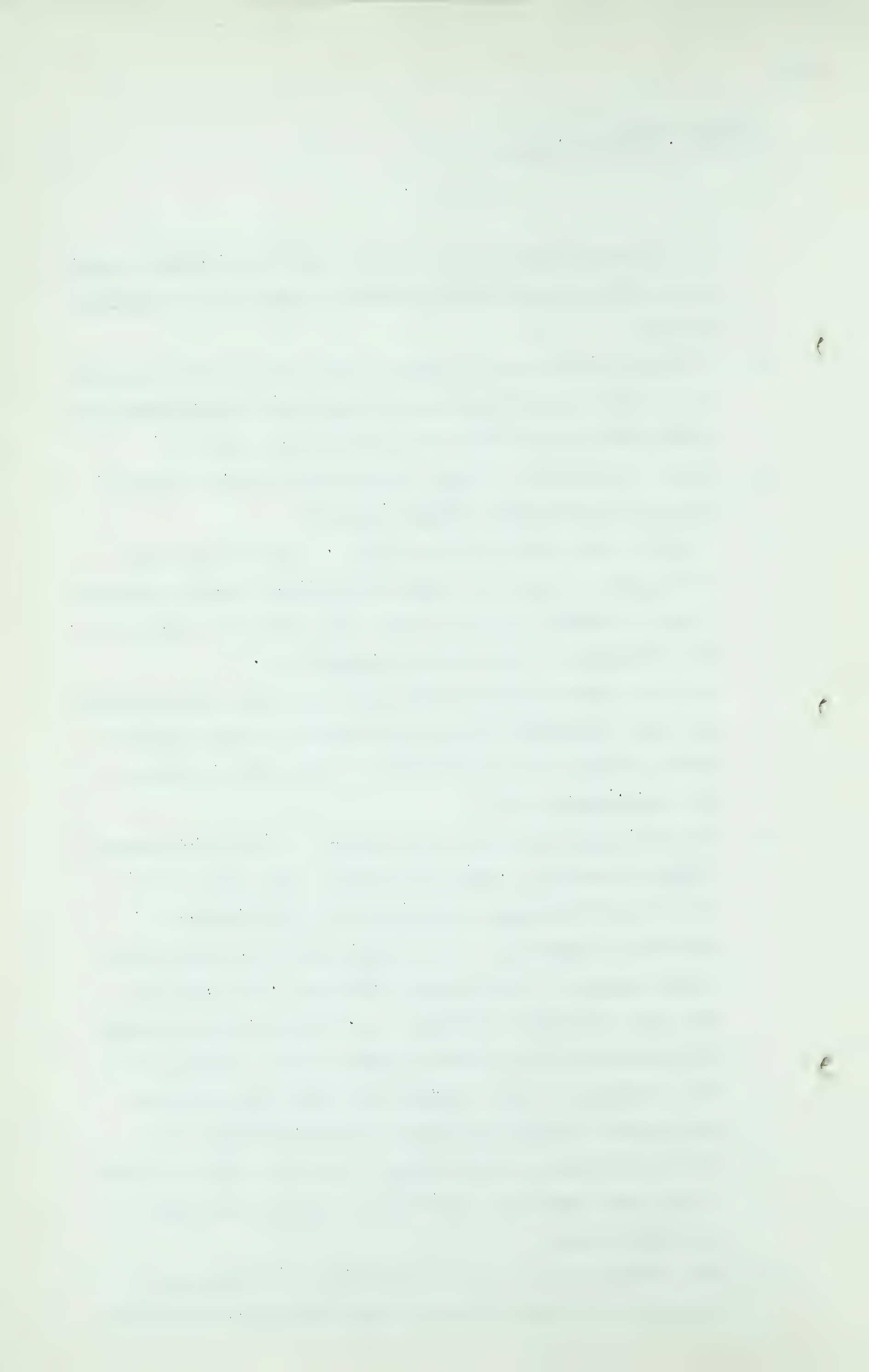
Q Yes. And you can only get the Dominion service by also serving in the United States' markets?

A I do not know anything about that. I just assumed they were going to spend the money for several hundred miles of line by putting a spur on, that they were also making service available to some other communities.

Q So that your conclusions that you have been outlining here and your information then is not based on a real investigation of what the problems are in the Western element of this reciprocal deal?

A My conclusions are based on a premise of an exact exchange of gas in quantity, with the Canadian gas going out to Seattle and Washington and in place of that Texas or Oklahoma or Kansas gas in the same quantity being handed to the people in your Eastern Provinces. Now, that is what my conclusions are based on. The record may contain other matters but I am only talking on the premise of a free exchange of equal quantities of gas which enables the public to receive and utilize space heating at a lesser price than could be done if you put a line in there to run from Texas up to the East or Texas to the West to serve that area.

Q Now, would you say it is inconsistent with the public policy in the United States as interpreted by the Federal



Binford Arney,
Cr. Ex. by Mr. McDonald.

- 2802 -

Power Commission if an offer was made to deliver gas in the Seattle-Portland area, Washington, Oregon generally, and it was not accompanied by the export of gas from Texas to the Province of Ontario?

A I want to make sure I understand that question. You are telling me to forget this reciprocal exchange now?

Q Yes, that is right.

A And you are asking me if there was just the case of exporting gas from Canada to Washington and Oregon?

Q Yes.

A Whether that would be inconsistent with the public interest of the United States?

Q Yes.

A All right, I will speculate with you on that one.

Q No, no. You just tell me in as few words as you can.

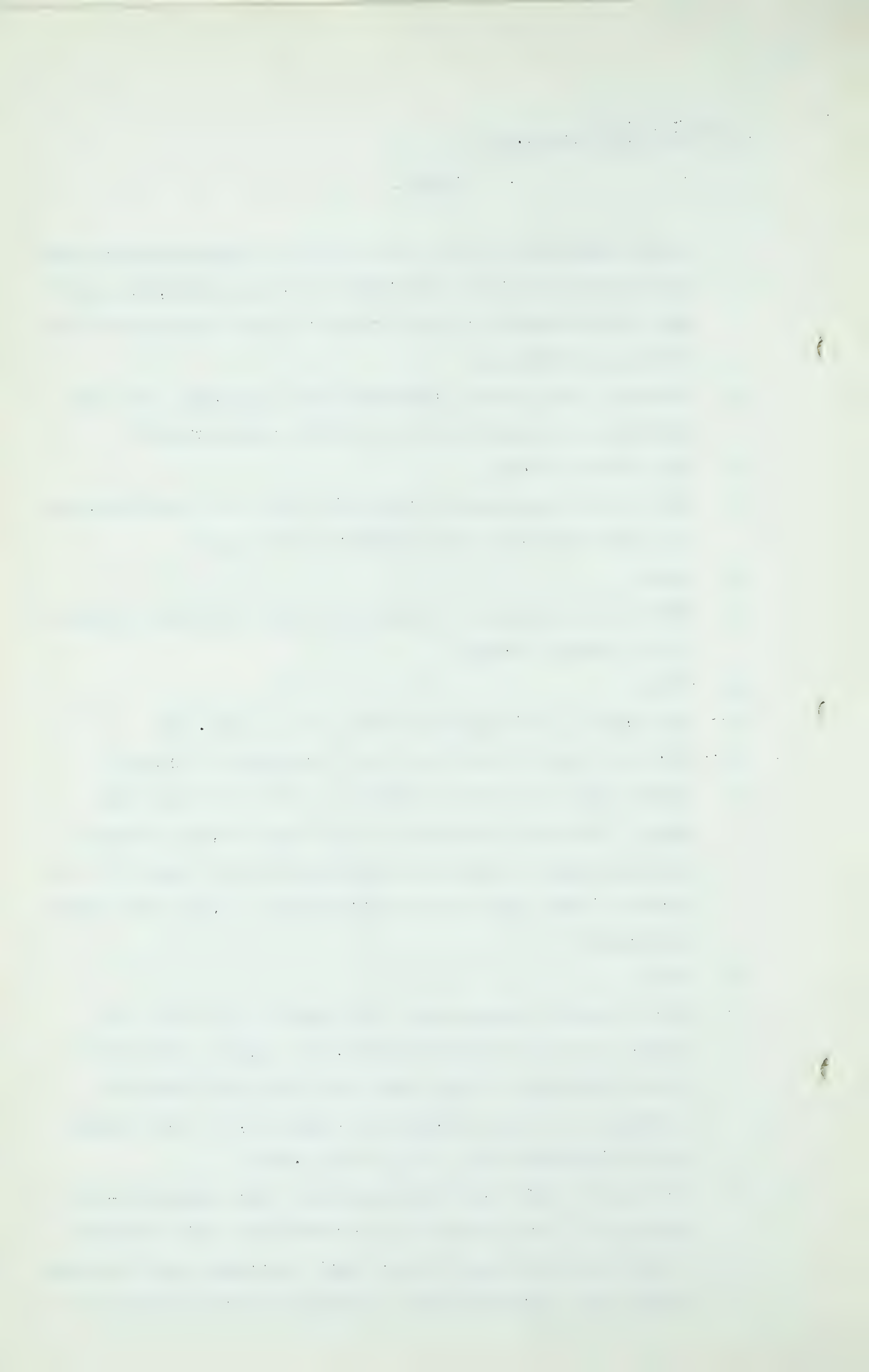
A There again it would all depend on the record that was made. There can be people in the United States, certain groups, maybe for their own reasons, who can object to any export. There can also be other groups can say, "We object to import."

Q Yes?

A Now, for me to imagine what the record is and what the effect is, that is pretty hard to do. Again, the Federal Power Commission in that case would have the burden of looking at all the evidence, the whole record, and making their conclusion that it is or it is not.

Q You haven't any doubts with regard to this reciprocal proposal which you have made, as I understand your evidence?

A I think it takes away all the local interests and the local questions. In other words, anything that was justified in



Binford Arney;
Cr. Ex. by Mr. McDonald.

- 2803 -

that was justified in these applications you have just been holding in your hand here, I think those are removed on an exchange agreement because we are not then putting United States gas into Eastern Canada, we merely have got a transportation device by which we are putting Alberta gas to serve in your Eastern Provinces, in effect. I am not saying you can not get the other one approved where it does not involved interchange. I do not know the facts, I do not know what the record is going to be. I am just saying, I think this other proposal has removed the factions of opposition on any kind of application.

Q Doesn't your conclusions arrive at this, if Ontario was served with gas from some other source than from the United States that then you have serious doubts whether they would be permitted by the Federal Power Commission the importation of gas for the Washington and Oregon districts? Doesn't that follow?

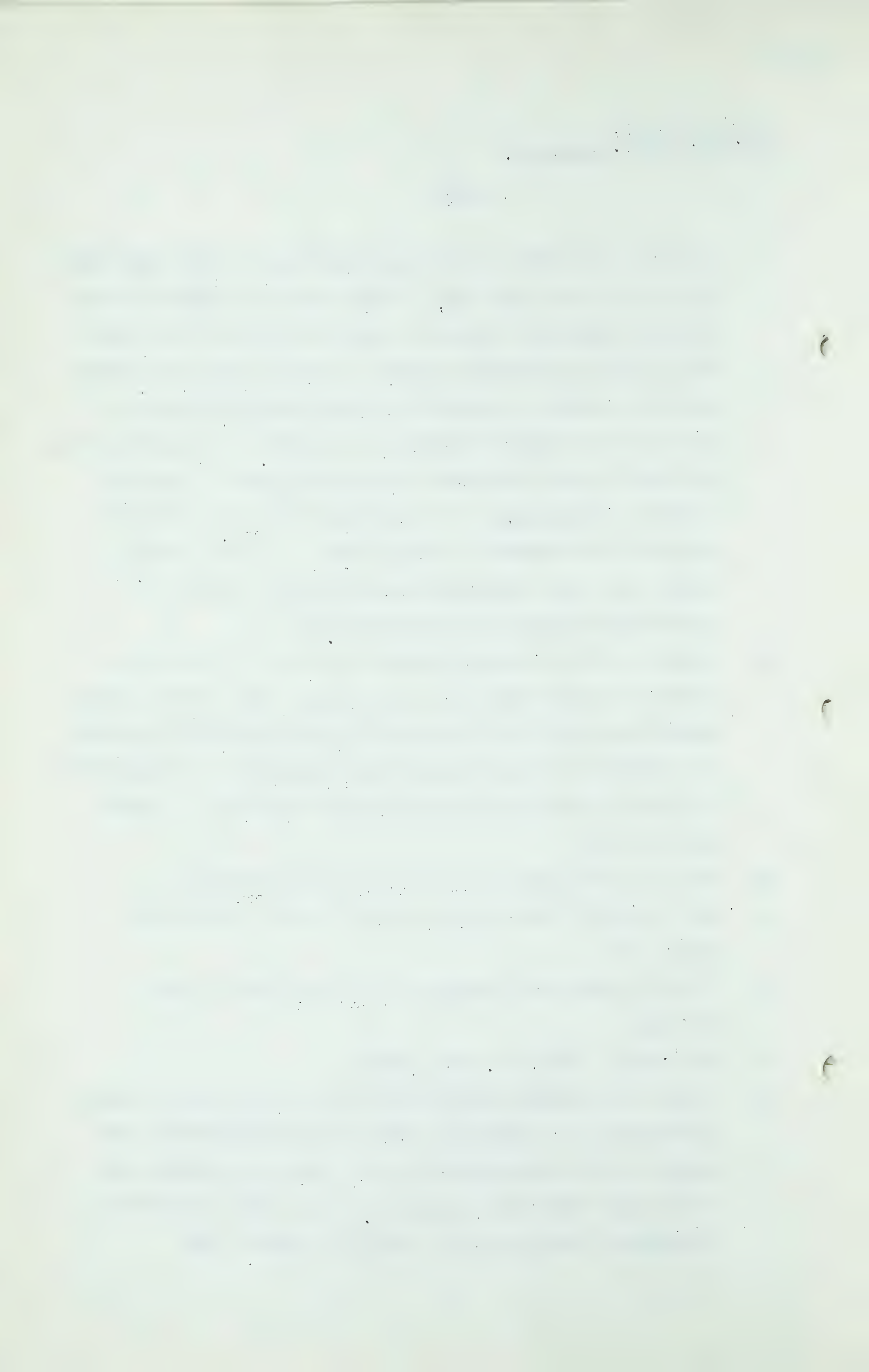
A No. I don't want to say that that is to follow.

Q No, you don't say it is to follow but you have doubts about it?

A I don't know what interveners you would have in that hearing.

Q All right. Thank you, Mr. Arney.

A I can see somebody thinking they have a big reserve being developed in the Northwest part of the United States who might say that we were trying to starve that market and they might intervene and object to it. What weight the Commission would give it I certainly can not say.



Binford Arney,
Cr. Ex. by Mr. Martland.

- 2804 -

CROSS-EXAMINATION BY MR. MARTLAND:

Q Mr. Arney, you have read to us Section 3 of the Natural Gas Act. That section applies to export of any natural gas in the United States to a foreign country, does it not?

A It does, sir.

Q And equally to any importation from a foreign country?

A My interpretation of the express, clear language of the Act.

Q And you have told us the meaning of the words, "public interest". I take it we can add to it that means public interest of the United States of America?

A Correct, sir.

Q And under that section, as I read it, the Federal Power Commission is given very broad powers as to the imposition of terms and conditions with respect to any order which it makes as the result of an application under that section?

A That is correct. They have broad powers and discretion to put what they think ends in the public interest.

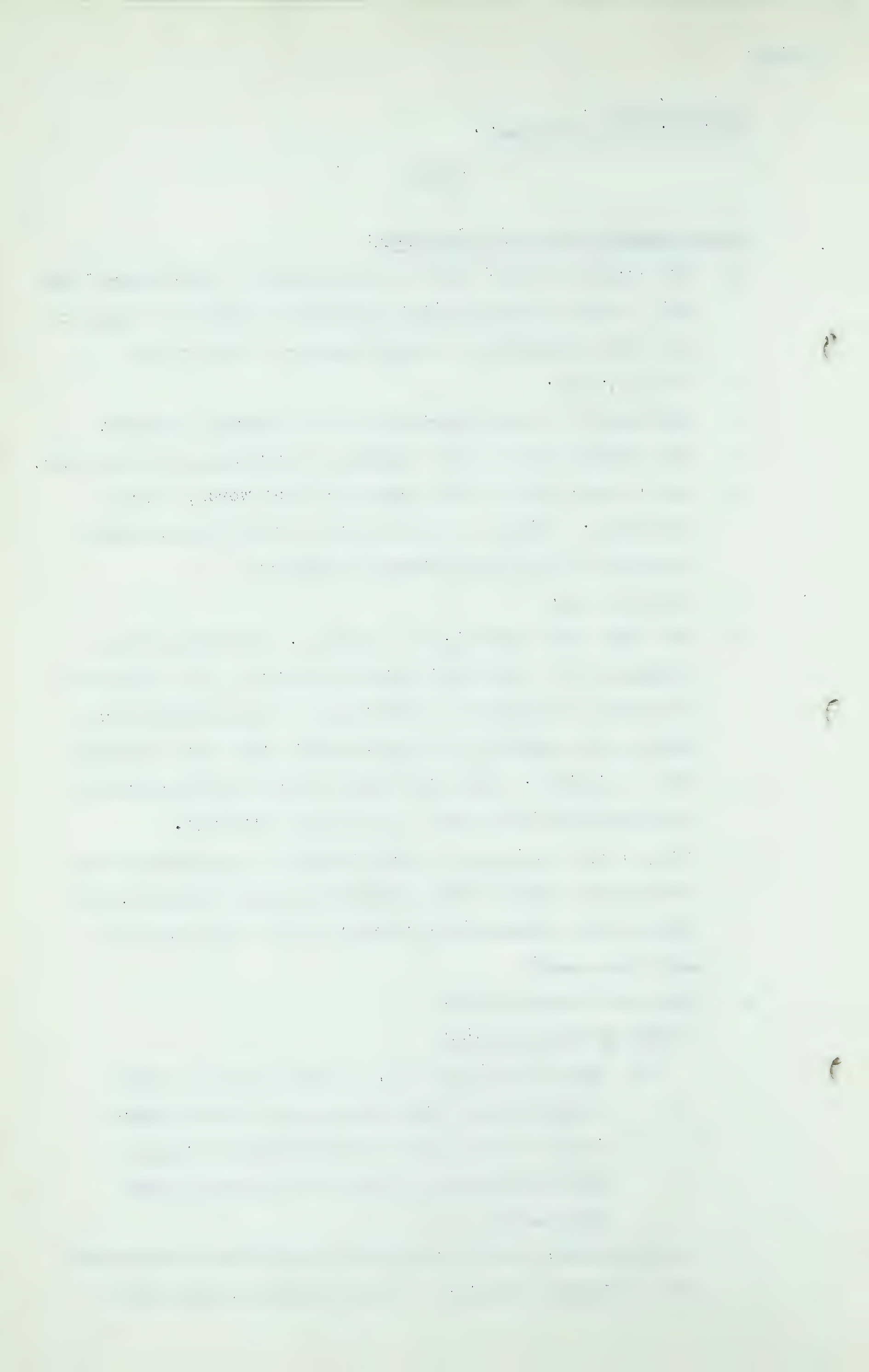
Q Can you tell me this, in your opinion is the Federal Power Commission limited in the exercise of those powers by the terms of any pre-existing contracts which the applicant might have made?

A Would you re-state that?

BY THE REPORTER READING:

"Q. Can you tell me this, in your opinion is the Federal Power Commission limited in the exercise of those powers by the terms of any pre-existing contracts which the applicant might have made?"

A In other words, we will say that the applicant has entered into a 20-year contract. You are asking me, does that



Binford Arney;
Cr. Ex. by Mr. Martland.

- 2805 -

contract preclude the Commission from putting any such conditions as they think are in the public interest?

Q Yes?

A Then the answer is "no", it does not preclude them in any way. The Commission in their authority may say in the public interest, "We wish to prescribe condition 1."

Q Yes?

A Then the ball is thrown back to the applicant and the applicant can take the condition or he can forget the whole deal.

Q Yes. Assuming a company was proposing the export of natural gas out of the United States to British Columbia and had entered into a contract with producers there that their requirements should take priority over those of the United States consumers in case of a shortage. Could the Federal Power Commission impose a condition under Section 3 which would have the effect of over-riding that contractual obligation?

MR. S.B. SMITH: Perhaps you would be good enough to explain whether you are talking about gas which came from Canada originally or gas which originated in the United States.

MR. MARTLAND: Well, I will ask it this way first.

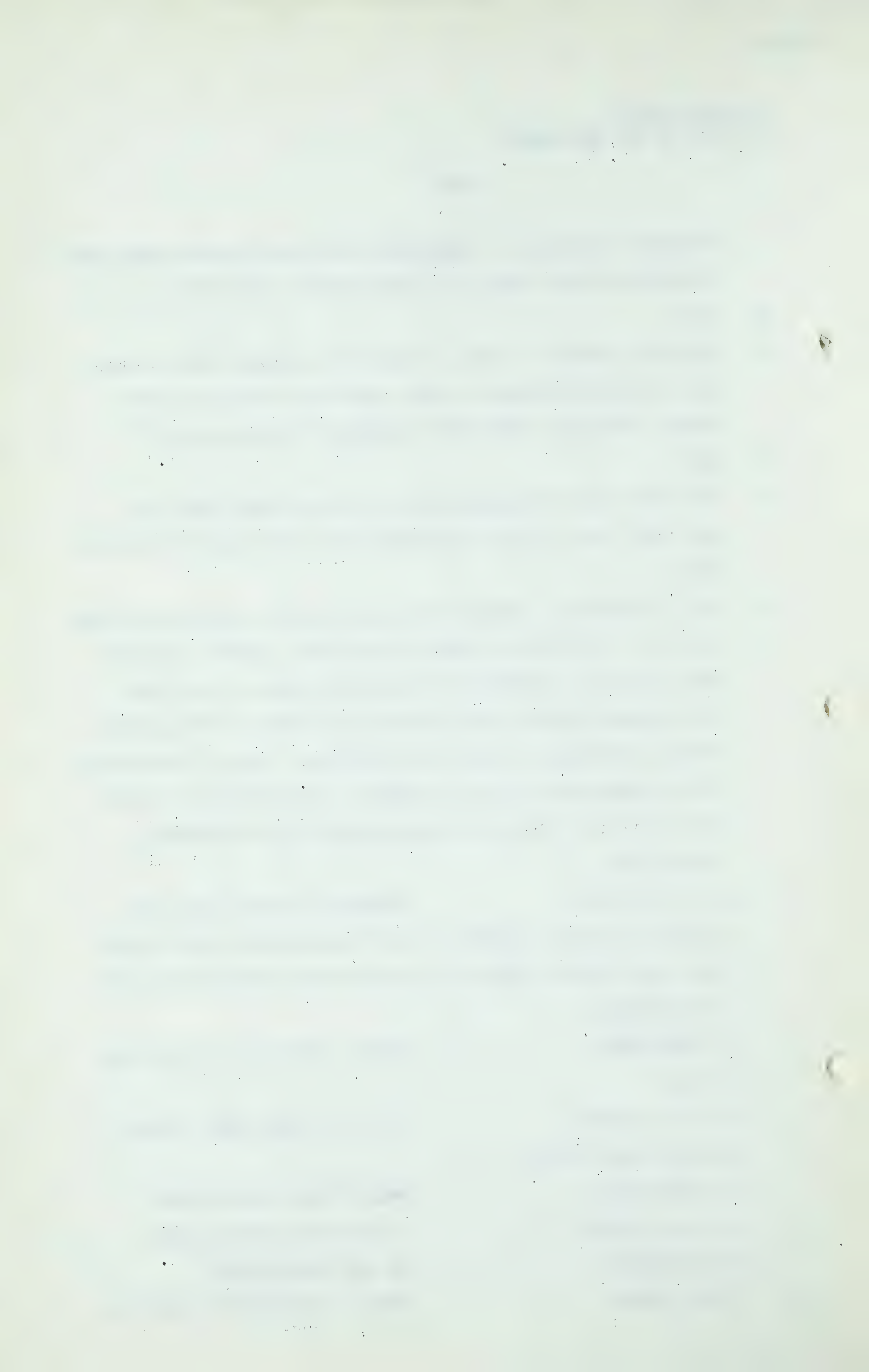
MR. S.B. SMITH: I do not know what you are talking about then.

MR. MARTLAND: Maybe the witness does.

MR. S.B. SMITH: I don't see how he can.

Q MR. MARTLAND: Do you understand?

A THE WITNESS: Well, I understand that the



Binford Arney,
Cr. Ex. by Mr. Martland.

- 2806 -

last two or three minutes we have not been talking about the proposal of Prairie and Pacific Northwest at all.

Q Quite right.

A We got away from that and you were asking me hypothetical questions on some other plan.

Q I am asking you some hypothetical legal questions relating to the application of the Natural Gas Act.

MR. S.B. SMITH: If you are going to ask hypothetical questions I suggest you should give clear facts to base the hypothetical question on.

Q MR. MARTLAND: Do you understand the facts which I stated? I am asking you to assume a company which is applying for the export of natural gas to Canada from the United States. It has entered into a contract with consumers in the Province of British Columbia, to which it proposes to export, to the effect that in the event of a shortage making it impossible to supply all its customers those in the Province of British Columbia will have priority. What I ask you is, on those facts is the Federal Power Commission precluded from imposing conditions which would have the effect of varying that contractual obligation?

A No. The Commission is not precluded from adding such conditions as it feels are necessary in the public interest of the public of the United States but the applicant is not bound to go ahead with the project under conditions which he feels are onerous.

Q But he can not go ahead without fulfilling those conditions, and he has the option of going ahead?

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

Binford Arney,
Cr. Ex. by Mr. Martland.
Cr. Ex. by Mr. Porter.

- 2807 -

A Producer-wise, here is what happens. He has got some conditions, it is sound business risk to decide we are going ahead and accept the certificate and apply that these, or we are going to file a motion for re-hearing and try and get that onerous condition released. Now, he may or may not be successful, depending upon his record again, but if he has done everything he can he has to make his decision to go ahead as the Federal Power Commission authorizes or abandon the project.

Q Yes. But there is no question the Commission can exercise that jurisdiction under Section 3 in the teeth of existing contractual obligations?

A The language in the Act is broad enough and gives them power to add certain conditions.

Q Thank you very much.

CROSS-EXAMINATION BY MR. PORTER:

Q Mr. Arney, you read us this morning a speech called "The State of the Union", didn't you, part of a speech delivered?

A I answered counsel's question as to what arguments I had presented in my own case to the Federal Power Commission, and in answering that I read part of the argument that had been made yesterday.

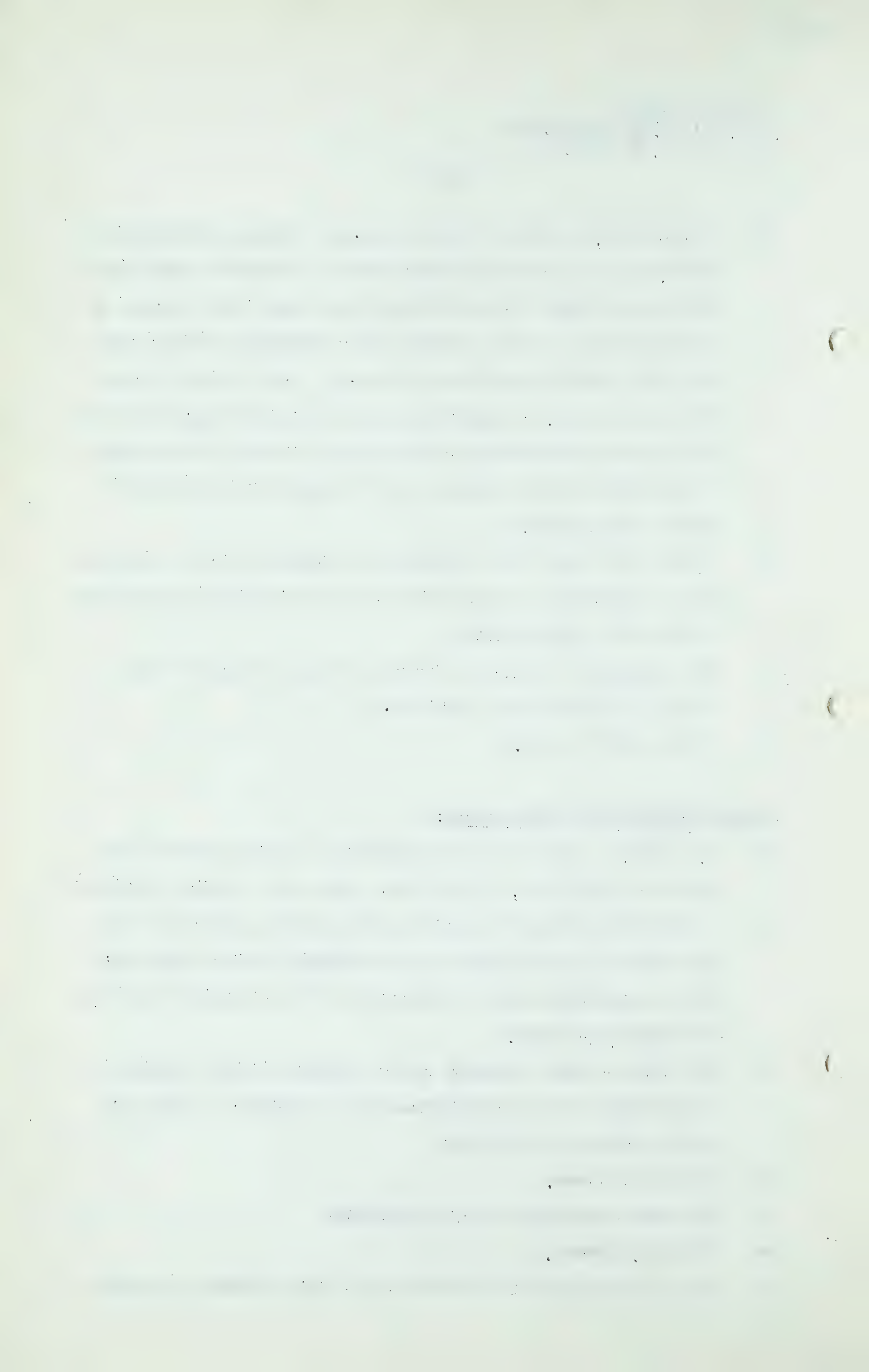
Q And part of that argument was an extract from a speech by a president of the United States to Congress, I take it, on the State of the Union?

A That is correct.

Q What was the name of that president?

A Harry S. Truman.

Q Well, do you know that there are a large number of people



Binford Arney,
Cr. Ex. by Mr. Porter.

- 2808 -

in the United States who do not believe that?

A Do not believe which, sir?

Q That that is your foreign policy and that is the State of the Union?

A That there are a lot of people in the United States who do not believe that that policy --

Q That Mr. Truman's declaration of that policy is the policy of the United States?

A Now, I do not want to get into any political arguments.

Q Oh, you are in right up to your ears. You are in, and you are going to stay in for a little while, too, I may tell you.

A All right.

Q Just answer the question, do you know that there are a large number of people in the United States who do not believe that that is the foreign policy of the United States?

A I don't know.

Q You do not know. Do you know whether or not there is a duty on raw copper going into the United States?

A Yes, sir.

Q Is there one?

A Yes, sir.

Q Do you know whether there is a duty on zinc?

A I assume there is, sir, but I am not familiar with zinc, and I have not had any personal dealings with it.

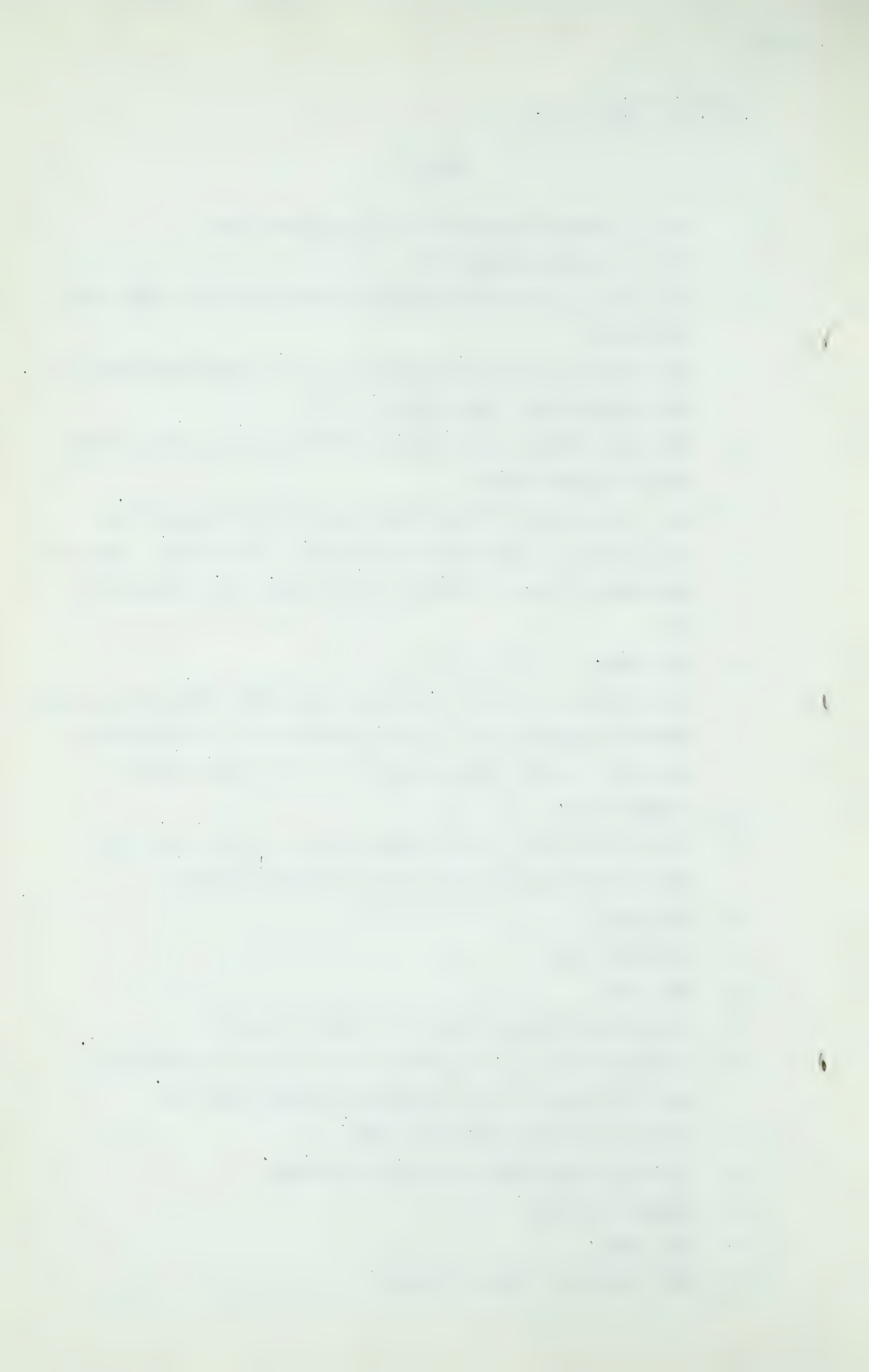
Q Do you know anything about beef?

A I can go along with you a ways on beef.

Q There is a duty?

A Yes, sir.

Q And there is a duty on wheat?



Binford Arney,
Cr. Ex. by Mr. Porter,

- 2809 -

A Well, you are familiar. You can tell me what there is a duty on and I will just take your word for it.

Q No. You came up and told us the policy of the United States was one of benign and benevolent exchange of raw products. You were quoting Harry Truman. I get a lot of papers from down there that seemed to me to indicate a lack of unanimity at the policy level, and I just wondered if that was the national policy. Do you know whether there is a duty on wheat?

A I assume there is, sir.

Q Do you know any single solitary raw product produced in Canada that is not subject to duty going into the United States outside of natural gas, and I think there is a cent on it?

A Is there natural gas going into the United States?

Q I say, do you know of any single solitary raw product produced in Canada that is not subject to a duty on its way into the United States?

A I am not familiar with your duties, sir.

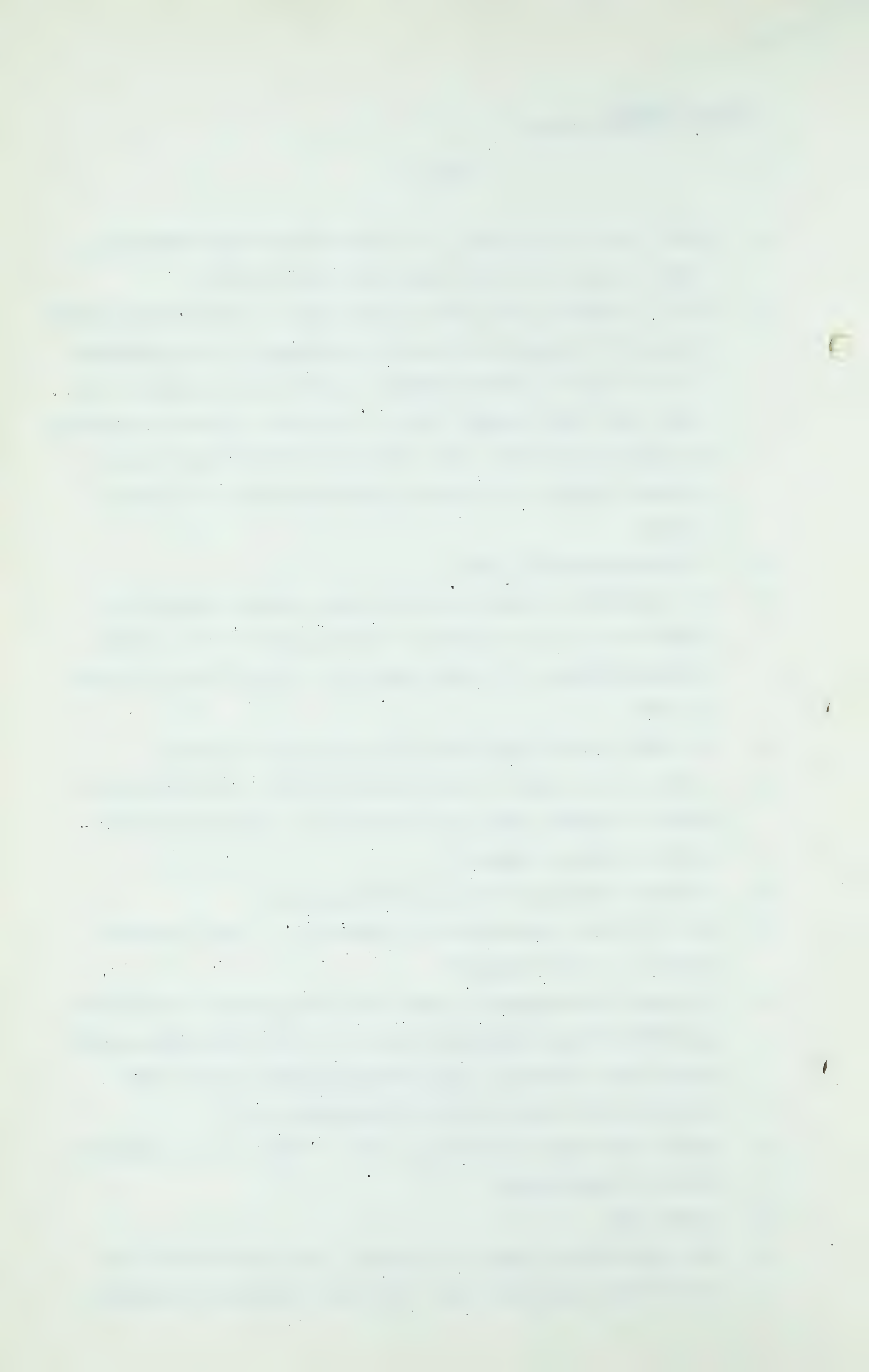
Q So it is not your word we are taking, it is Mr. Truman's, really, in the evidence?

A I think the statement I read was talking about a reciprocal exchange of raw material, the use of those materials available, and it was not a statement dealing with the duty situation on either side of the border, sir.

Q Well, the report is clear on that. When did you graduate from the law school?

A 1931, sir.

Q Oh, you are too young to remember, but there was an old music hall song that went, "And when I said how wonderful



Binford Arney,
Cr. Ex. by Mr. Porter.

- 2810 -

"you are they wouldn't believe me", and it describes very well my reaction to this exchange of raw products. Now, then, I come to the Reynosa case, which is reported in 64 Public Utilities Reports, which is to be found in our law library in this building, and I want to read you some of it at page 164 of that report.

A What is the date of it? I want to get my own thinking straight as to what you are talking about.

Q This is Docket G, 595, Opinion 135, June 6th, 1946.

A That is the 3-G opinion on export authorization.

Q We do not have those sizes up here. If it is 3-G it is all right with me. And this is what one of the members of the Commission said in giving judgment -- no, this is by the Commission --

" Upon consideration of the record before us, we find that the exportation of natural gas by Reynosa to Mexico will not be inconsistent with the public interest, if limited inter alia, by conditions as follows."

Now, by the way, you told my learned friend that the Commission can impose any conditions it likes on granting an export permit under Section 3?

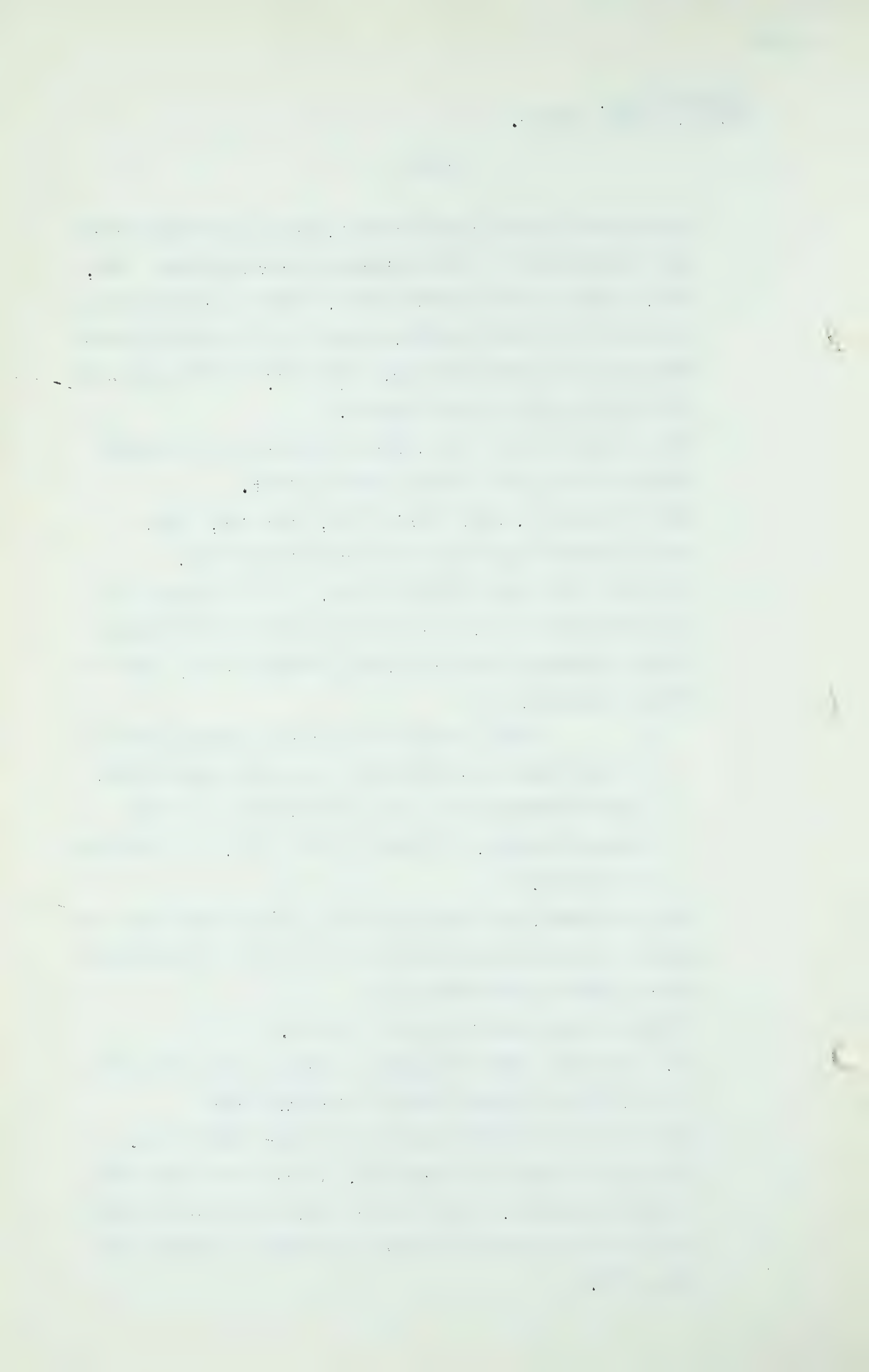
A I told you they had the power to do so.

Q Yes. They also have the power to change those from time to time, haven't they, review their own order?

A Their order will either specify so or not specify so.

Q Supposing it does not specify so, do they have the right to change it again, review their order from time to time?

A I do not think they would have the right to abrogate an order, sir.



Binford Arney,
Cr. Ex. by Mr. Porter.

- 2911

Q Now, I did not ask that. To change it?

A It depends on the change you are talking about. In the Reynosa case you were about to read, they limited the export from certain fields. Since that time they changed their order and added additional fields. Now, I call that an inconsequential change.

Q Now, just a minute. They have power to review it, inconsequential or not, of their own volition?

A I am sure they have power to review it.

Q Well, here are the conditions and I want you to observe the conditions:

" - that the exportation be made in accordance with terms of the contract between Reynosa and Gas Industrial as submitted except as hereinafter specified; that the exportation be confined to natural gas produced in the La Blanca, North Weslaco, and South Weslaco fields; that the exportation shall be made only in such quantities as, when added to the quantities of gas that may be received from Mexican sources of gas supply under its permit, will enable Gas Industrial to meet market requirements not exceeding 50,000 thousand cubic feet per day, and in no event shall deliveries by Reynosa to Gas Industrial exceed 50,000 thousand cubic feet per day."

B. Arney,
Cr. Ex. by Mr. Porter.

- 2812 -

A That is a rather inconsequential export, isn't it, 50,000 feet a day?

A The industries of Mexico are rather inconsequential, and they take only that amount of gas.

Q Yes?

A That is, they are rather inconsequential having in mind the industries that you have here, and it was sufficient for the industries in North Mexico.

Q It is still an inconsequential export, 50,000 feet a day?

A It all depends on the point of view, sir. It is certainly not as big as 200, but it was fuel that was necessary for the industry that makes the steel in Mexico, and the glass, etc., and that is a substantial amount of export for them.

Q Yes, I will go on.

"... that the authorization hereby granted shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time during the term hereof, for consumption in the United States by such person or municipality, it being the intent of this authorization that at all times, persons and municipalities in the United States are to receive preferential service over that to Gas Industrial."

At all times. That is, a day to day right to restrict, isn't it?

A That is a matter of opinion, sir.

Q I see. It is here in English.

A Yes, in English. That refers to paragraph 1, being part

B. Arney,
Cr. Ex. by Mr. Porter.

- 2813 -

of the contract?

Q Yes.

A With regard to Gas Industrial?

Q Yes?

A And, therefore, we have no right to change that contract, sir.

Q I see.

A I think it is talking about other matters.

Q Let me read you this language again before you tie yourself down to that.

"The authorization hereby granted shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality. . . "

And that is if we have got that much, we have got to fulfil the contract.

". . . shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time during the term hereof, for consumption in the United States by such person or municipality. . . "

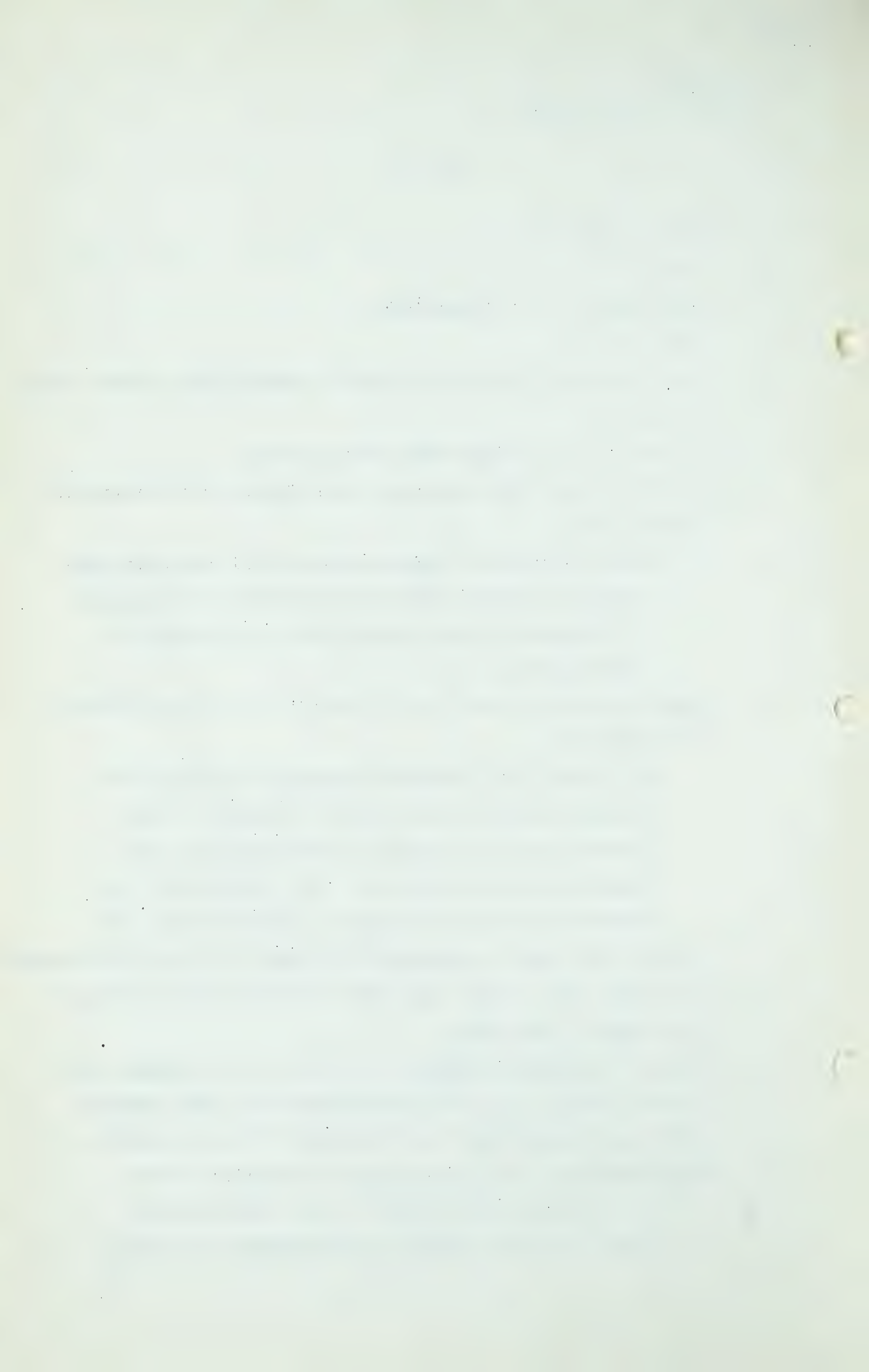
Do you still want to say that they cannot cut down the contract?

A You know, I have spent days with that Order where maybe you have spent a few minutes.

Q This is the English language, and this is the language that we just loaned you, and we understand it in this country.

A And I am interpreting it in the light of the way that we understand it, I am just going by the English of it.

Q ". . . it being the intent of this authorization that all times, persons, and municipalities in the



B.Arney,
Cr. Ex. by Mr. Porter.

- 2814 -

"United States are to receive preferential service
over that to Gas Industrial."

Do you still want to say that they cannot cut down the
contract?

A I am saying that is an expression of a feeling of the Commis-
sion as it so says, that being the intention, that the people
within the States have preference.

Q Yes?

A The reason for it . . .

Q Just a minute.

MR. S. B. SMITH: Now, Mr. Porter, he is in the middle
of a sentence. Let him answer.

MR. PORTER: I am sorry.

A You would have almost to be familiar with the record to see
the purpose of why that was put in.

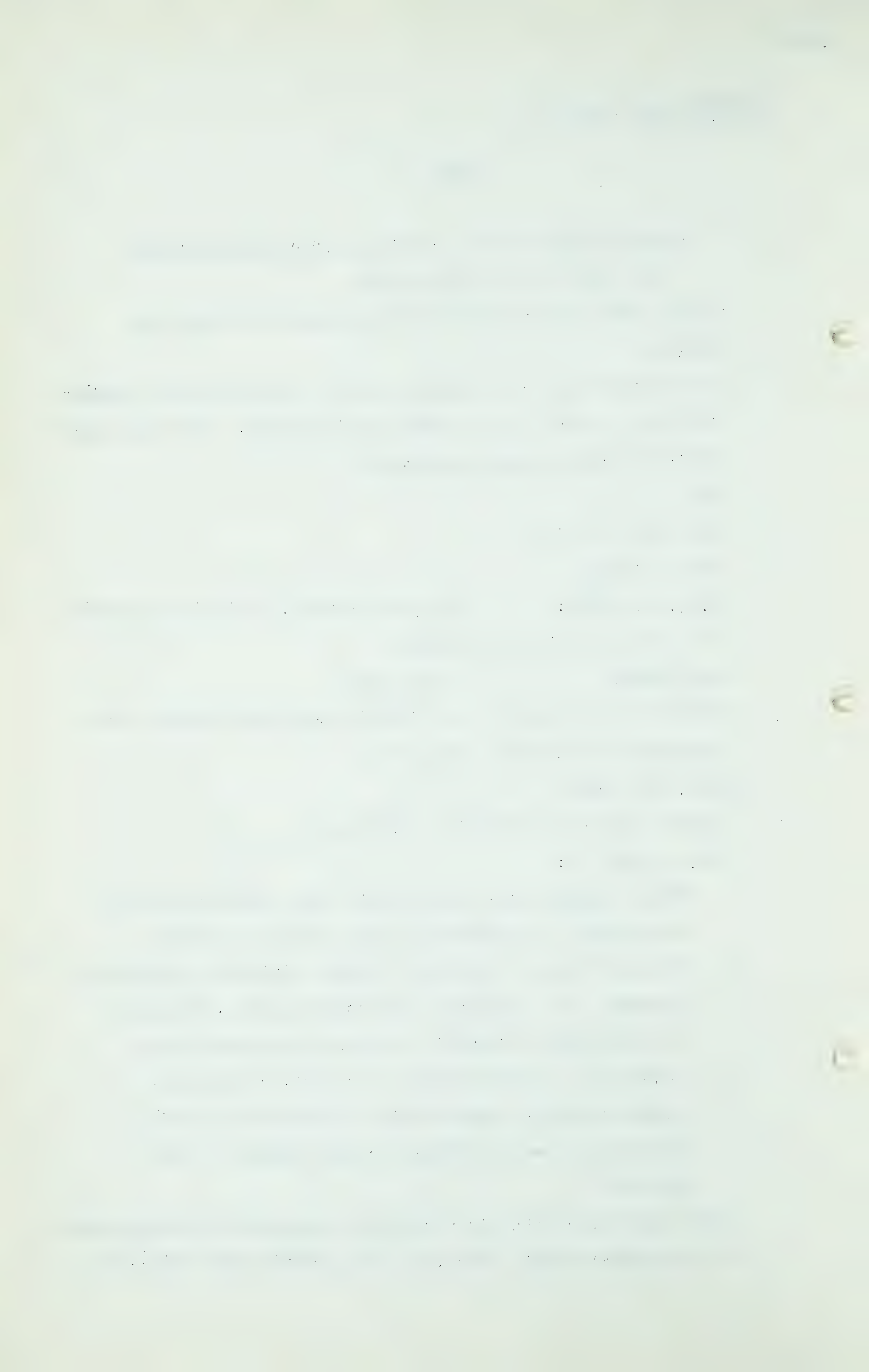
Q Well, Mr. Arney . . .

A And the estimates of Mexican reserves.

Q Now, he goes on:

"There remains for consideration the question whether
the export authorization under section 3 of the
Natural Gas Act should be further limited by requiring
Reynosa, as a condition precedent thereto, to obtain
a certificate of public convenience and necessity
pursuant to section 7(c) of the act, as amended,
authorizing the construction and operation of the
pipe line from the Hidalgo county fields to the
border."

And he says that that is a condition precedent to the granting
of the export permit, 7(c), to get a permit under 7(c), that



B.Arney,
Cr. Ex. by Mr. Porter.

- 2815 -

you require that?

A Very well. Do you want me to explain that?

Q Did you get a permit under 7(c)?

A Yes, I did.

Q Now . . .

A Do you want me to explain it?

Q I am going to give you a chance at length in my own way.

A And that is not the law in the United States, and it has since been decided by the Courts that 7(c) is not necessary, but we went ahead and applied to the Commission for 7(c) and were granted it.

Q Now, 7(c) - by the way, has 7(c) been repealed?

A No, sir.

Q Did the Courts then agree with this dissenting Commissioner, Draper, who said that an exporting company was not a natural gas company, therefore 7(c) did not apply?

A The Court agreed with Commissioner Draper to the extent that it was decided or held by the Court that 7(c) was not necessary.

Q Was not necessary?

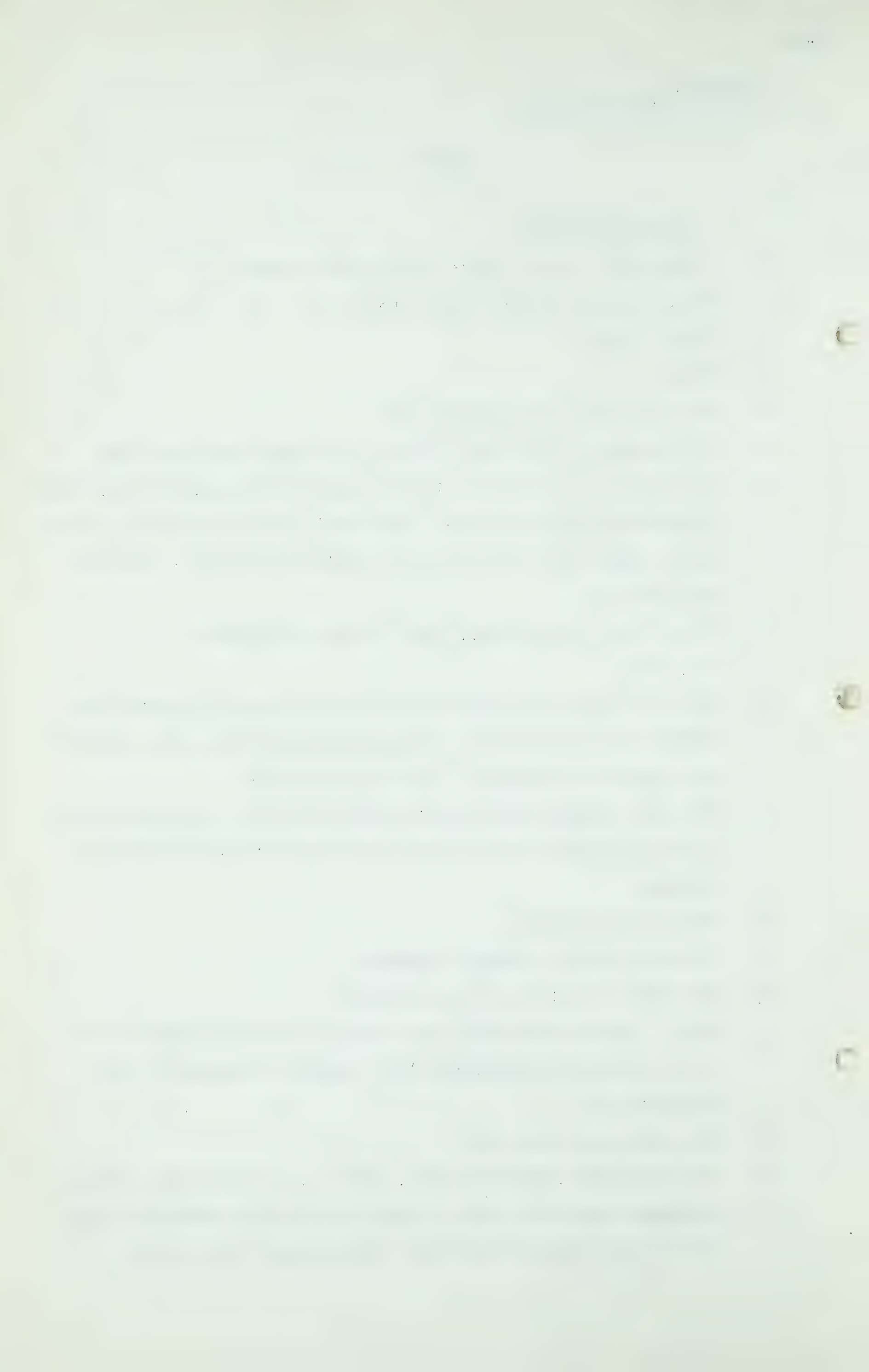
A In this case of foreign commerce.

Q Now 7(c) is still in the statutes?

A Yes. I do not know what application it has got here. If it is crossing interstate lines you have to have the 7(c) certificate.

Q Yes, and you still do?

A In interstate transportation, that is, a natural gas company building facilities has to have the 7(c) for new facilities, or for additional facilities, having regard to certain



B. Arney,
Cr. Ex. by Mr. Porter.

- 2816 -

limitations.

Q And that would apply to a company transporting gas from Texas to Buffalo, like Panhandle?

A Why, sure. The Commission issued a certificate to Tennessee, Texas Eastern, Transcontinental and Panhandle.

Q Now, I want to read you section 7(c).

" No natural gas company or person which will be a natural gas company upon completion of any proposed construction or extension, shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction of . . . "

Now, notice that.

". . . shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, unless there is in force with respect to such natural gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts of operation."

So that you have got to have that before you start. Now, it says "any company that is transporting gas"?

A Interstate.

Q Interstate?

A Yes.

Q Yes. A company coming from Texas, let us say, to Detroit, would have to get one of those?

A That is correct, sir.

Q Now, under 7(c), as I read the following sections, any person along that line may apply at any time to compel

B. Arney,
Cr. Ex. by Mr. Porter.

- 2817 -

delivery to him of gas out of that line?

A No, you are not correct.

Q I am not correct?

A No.

Q Now, let me get this clear. There is a line going by my back door, and there is a coal mine strike, and the line is full of gas going to Ontario, or going to Detroit, let us say, and there is no provision in your Act, I thought that section 7 did it, but is there any provision under your Act under which we could go to the Federal Power Commission and say, "We want some of that gas." My community wants some of that gas. Our state wants some of that gas. My war industries want it." Is there any provision under which that could happen?

A Look, I am going to have to get a pencil and paper with you.

Q Well, sir, that might be better.

A We are talking about a variety of questions that can arise. Now, to begin with, let us assume we have no pipe line to Buffalo, as you have it, or Detroit?

Q We have it. Let us assume about one that we have got.

A The answer is different. It is one way under one set of facts and another way on another set of facts.

Q Let us talk for some time about this one we have got, because I think we have built enough castles in the air. Let us talk about the line we have got there. Tell me where I am wrong there. Assuming there is a line there now, hauling gas, I want some of it, some of the load now in the line?

A All right, do I have to build a lateral to you?

Q I will build the lateral to you, I will tie it right on to

B. Arney,
Cr. Ex. by Mr. Porter.

- 2818 -

your line.

A And it is an existing line?

Q It is an existing line, yes.

A I do not have to add another horsepower or, I mean, any other horsepower or any other compression, to get you what you want?

Q All right, let us go that distance.

A And I have surplus gas under contract, and capacity in the line?

Q Yes, let us go that distance.

A Then you can go to the Federal Power Commission and ask for an Order to get some, and some may be allocated to you.

Q And the Federal Power Commission has only one obligation, and that is to the people of the United States under that statute, hasn't it? The public necessity and convenience of the people of the United States?

A Of all of the people, of all of the regions, not any isolated one?

Q Yes, of the United States.

A Of the United States.

Q And anyone can then, so far as the Commission is concerned, apply at any time to divert that gas that is coming to Canada?

A Uncommitted gas?

Q It is committed to whom?

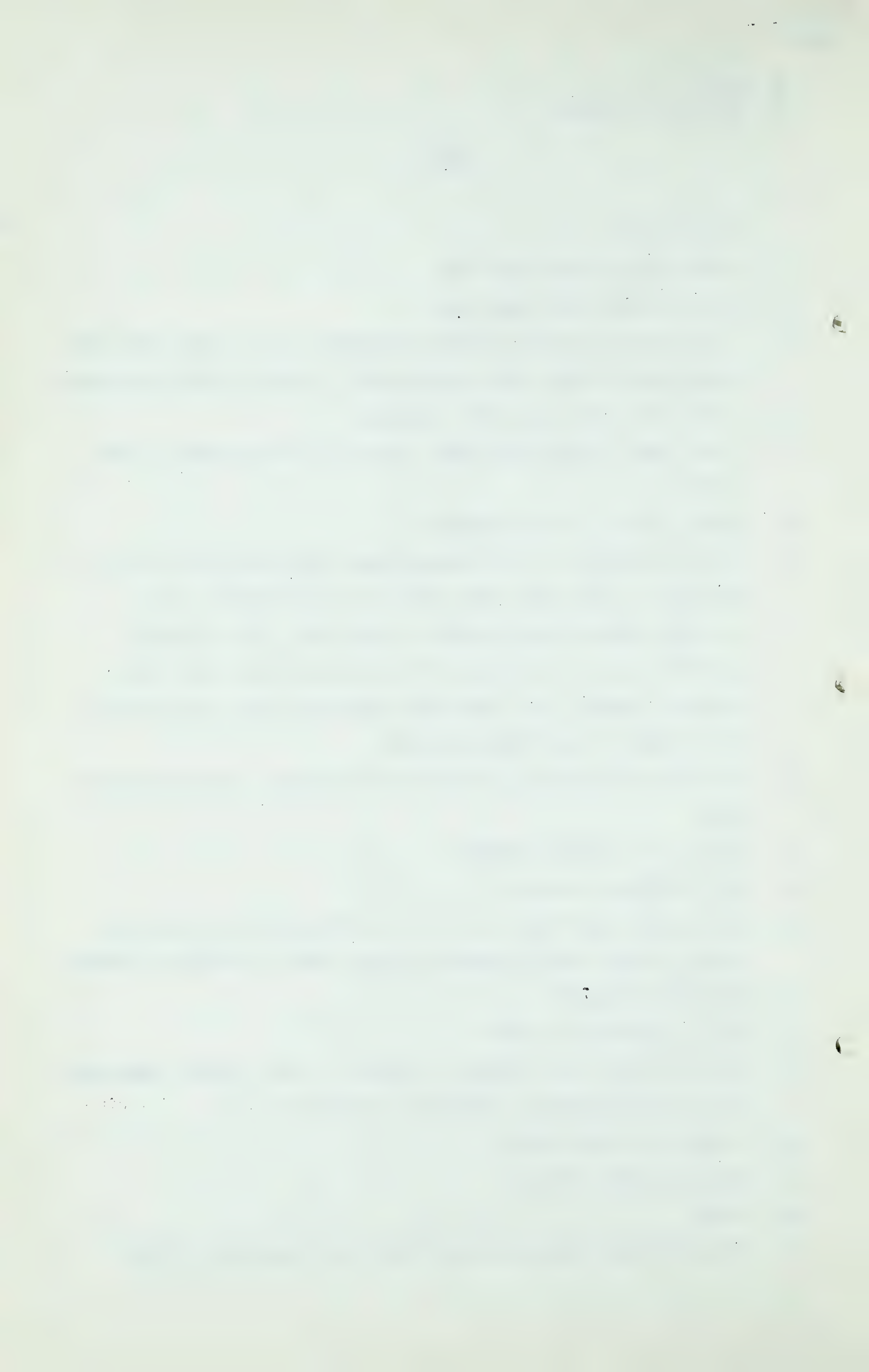
A That is what I was trying to explain to you. In the beginning you go with regard to building a pipe line. . .

Q I know all about that.

A Say it is 200 million?

Q Yes?

A Now, when you finance a gas line to the capacity of 200



B. Arney,
Cr. Ex. by Mr. Porter.

- 2819 -

million, your diameter on the line is going to determine, the diameter of the line is going to determine the quantity at the other end. The Gas Company could not assume they were going to deliver 200 million feet in West Virginia, and then have a company come in and take it out half way up the line. You cannot finance that way. It has been the custom in new lines, Mr. Porter, to come in with firm contracts for the original capacity to a certain point. The Commission later does not take that gas out from that gas line, the Commission continues giving them their 200 million a day. Now, the company can increase that capacity and make another 50 million available.

Q Perhaps I am not making myself clear, Mr. Arney. This gas is coming up to Canada, it is not under the jurisdiction of the Commission, as I think you have told us, or the previous witness?

A I did not tell you that.

Q Do you think it is? Do you think the Commission has anything to say about the transport or price, transport cost or price?

A You are asking so many questions at one time. Ask me one at a time.

Q If I am going too fast for you, I can slow down?

A There are three questions, let us deal with them one at a time.

Q All right, go ahead?

A Now, you are talking about gas coming across the border?

Q Yes?

A The Commission has jurisdiction whether they permit export.



B. Arney,
Cr. Ex. by Mr. Porter.

- 2820 -

Q Yes?

A That is one thing.

Q Now, after that - -

A Well, now, before we get to "after that", how are we going to get it to the International Boundary to begin with? We have several methods of doing it.

Q All right, we have got it there.

A How do we get it there?

Q Pipe line.

A All right. Did we make a transportation contract with one company to carry it, and that company serving other customers in the United States? If so, the Commission has jurisdiction to approve that transportation contract.

Q On the export gas?

A Yes.

Q On the export quantity?

A Yes.

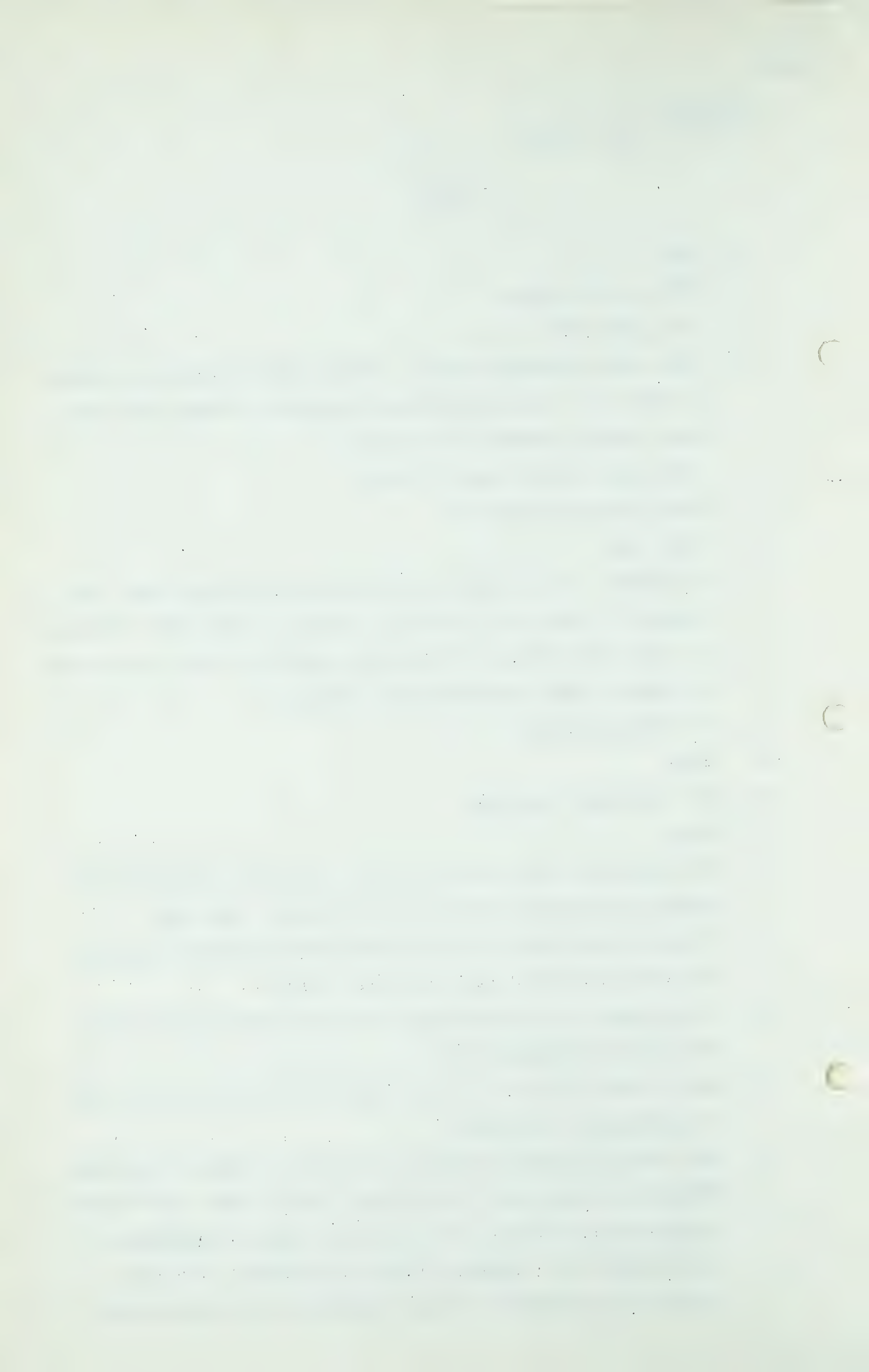
Q You could not have one charge for the fellow in Detroit and another charge for the fellow in Windsor, could you?

A I did not say that. You ask one hundred questions at once. The Commission will have set equal prices.

Q If we want to take the time, I can make this simple enough for you to understand it?

A And I think I can, in return, make it simple enough for you to understand the answer.

Q All right, suppose we have got this line. Now, let us take Panhandle, taking gas to customers, by the way, and it gets an extension to take, let us say, for sake of argument, X million feet into Canada. Now, one question: In your opinion has the Federal Power Commission any jurisdiction



B. Arney,
Cr. Ex. by Mr. Porter.

- 2821 -

over the transmission cost or of the sale price of that
X million feet of gas that is coming to Canada?

A Now, you ask me two questions.

Q The transmission costs?

A The Federal Power Commission does not have jurisdiction over
the price of the product that is going into foreign commerce,
but the Federal Power Commission will scrutinize when you are
going to Detroit, a joint line, with part of it going into a
foreign country and part of it interstate, it will analyze
and go into the facts and see if the system itself is getting
a fair return, and see that it is not going to cost the con-
sumers more for devoting part of the capacity for foreign
export, but they do not tell them what price to sell gas for
in Canada.

Q No?

A To the Canadian corporate entity that, in turn, would sell it.

Q And they would not let them haul it so cheap that the American
consumer is being hurt, because they are not paying their
share, I take it?

A I think that would be an ultimate . . .

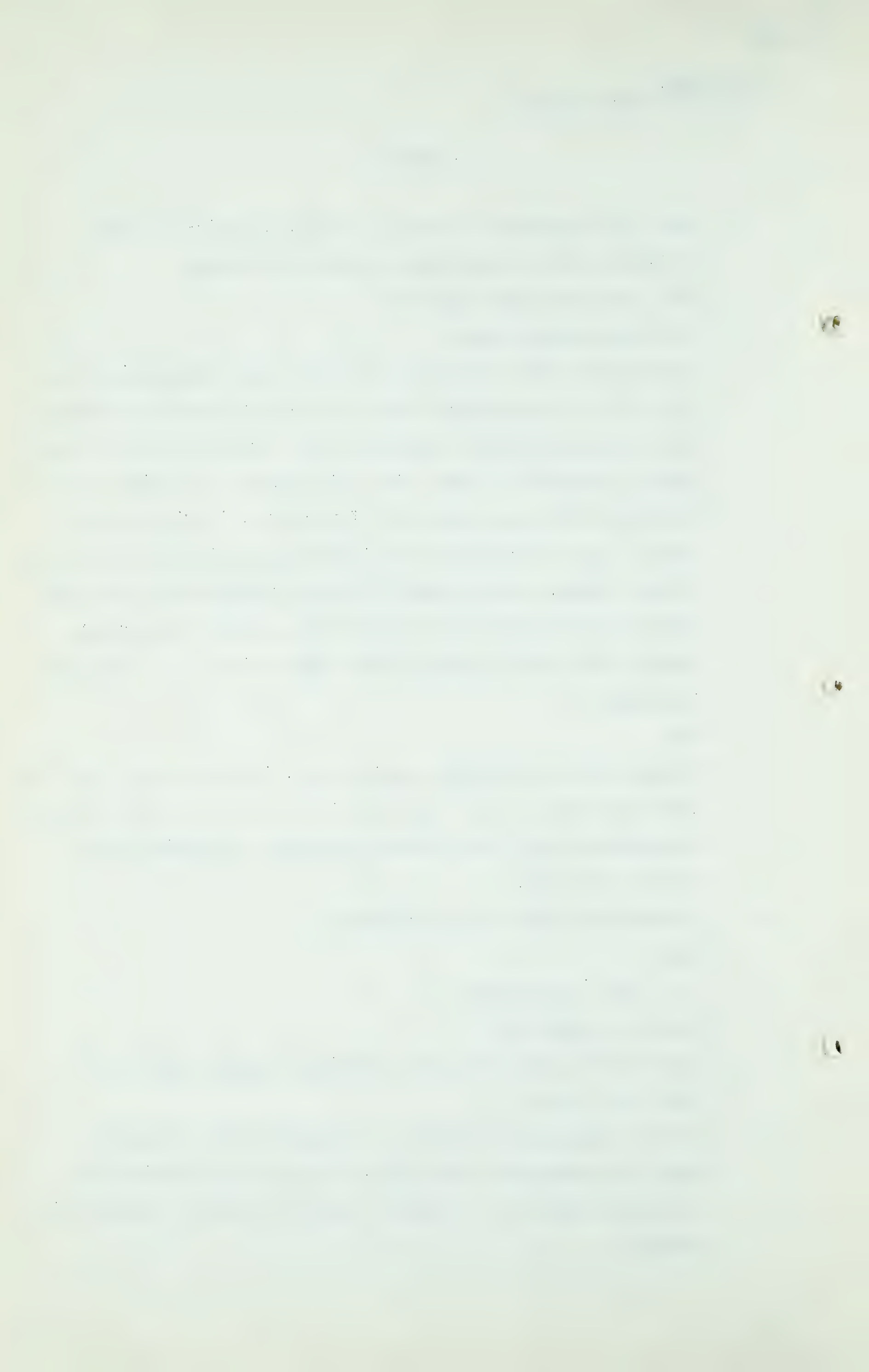
Q Yes.

A . . . fair assumption.

Q But that would not . . .

A And I do not think that your American Company would do it
that way either.

Q And the Commission would not be concerned with how much
they are charged for their gas; it seems to me their duty
is to the public of the United States, not to the public of
Canada?



B. Arney,
Cr. Ex. by Mr. Porter.

- 2822 -

A Pardon me?

Q And the Commission would not be concerned with how much overcharge there was, because, it seems to me, their duty is to the public of the United States and not to the public of Canada?

A What do you mean "overcharge"?

Q Suppose they charged more for hauling the export gas?

A That is a matter of contract between Prairie and Panhandle.

Q I see. Over which the Commission, you think, has jurisdiction?
A contract over which they have jurisdiction?

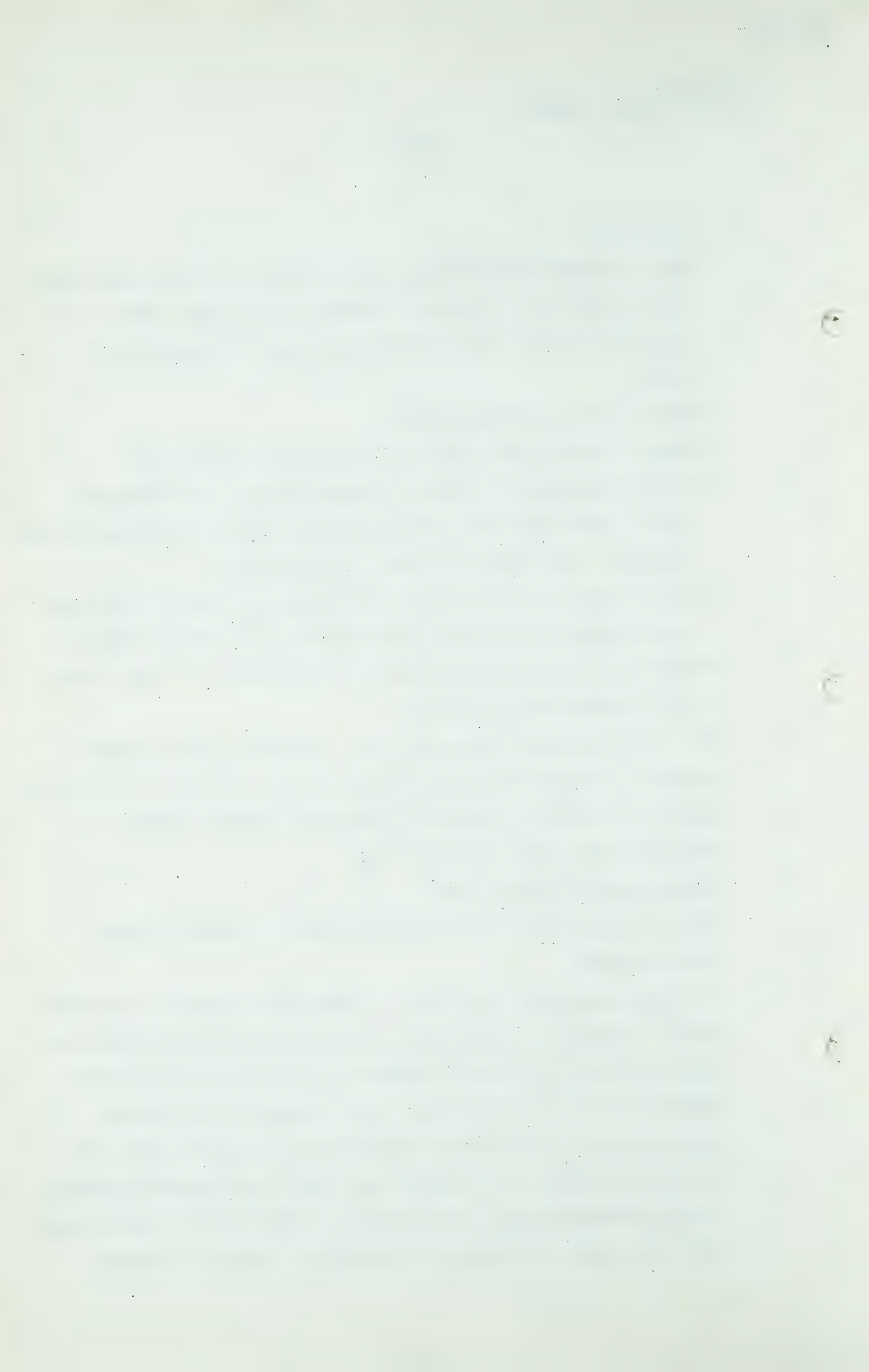
A Not so long as the funds that are being received by Panhandle are not injurious to their operations in the United States. Whether it is one cent more or one cent less, I do not think that interests the Commission.

Q No. The American Commission has a statutory duty to deal with the convenience and necessity of the people of the United States, all of the people of the United States, hasn't it?
You made that clear this morning.

A That is what I think, sir.

Q And it has no duty at all to the people of Canada, under this Statute?

A I do not agree with you, sir. Under this reciprocal arrangement I think we have got the same problems or conditions that would be put on by the Government authorities in the United States and the ones in Canada, and I would even envision that the two certificates would appear very much alike, and I would encompass the thought that they would both be looking at the reasonableness, they would be looking at it reasonably, and they would be trying to accomplish a benefit to both



B. Arney,
Cr. Ex. by Mr. Porter.

- 2823 -

companies. I do not think they would want to look at it in any other way.

Q You are talking again about that lovely, benevolent State of the Union speech, but I want you to come down to a natural gas Act and show me a word in that Statute that imposes any obligation on them to deal with the people of Canada, one word? Is there anything in there that you can find?

A They have jurisdiction over foreign export, that is, to your country. Now, there is no specific provisions where they have any hearings or anything about internal matters within Canada. Obviously, their jurisdiction does not go across the border.

Q Obviously their jurisdiction does not go across the border?

A But when you tell me that they do not think of the rights and equities of your people, they do.

Q I did not say that. I said they had no statutory duty towards the people or the consumers in Canada?

A No, they have no statutory duty.

Q And they have a clear statutory duty towards all of the people of the United States?

A Yes, that is correct.

Q And that statutory duty is to see that the public convenience and necessity is met by virtue of that Act?

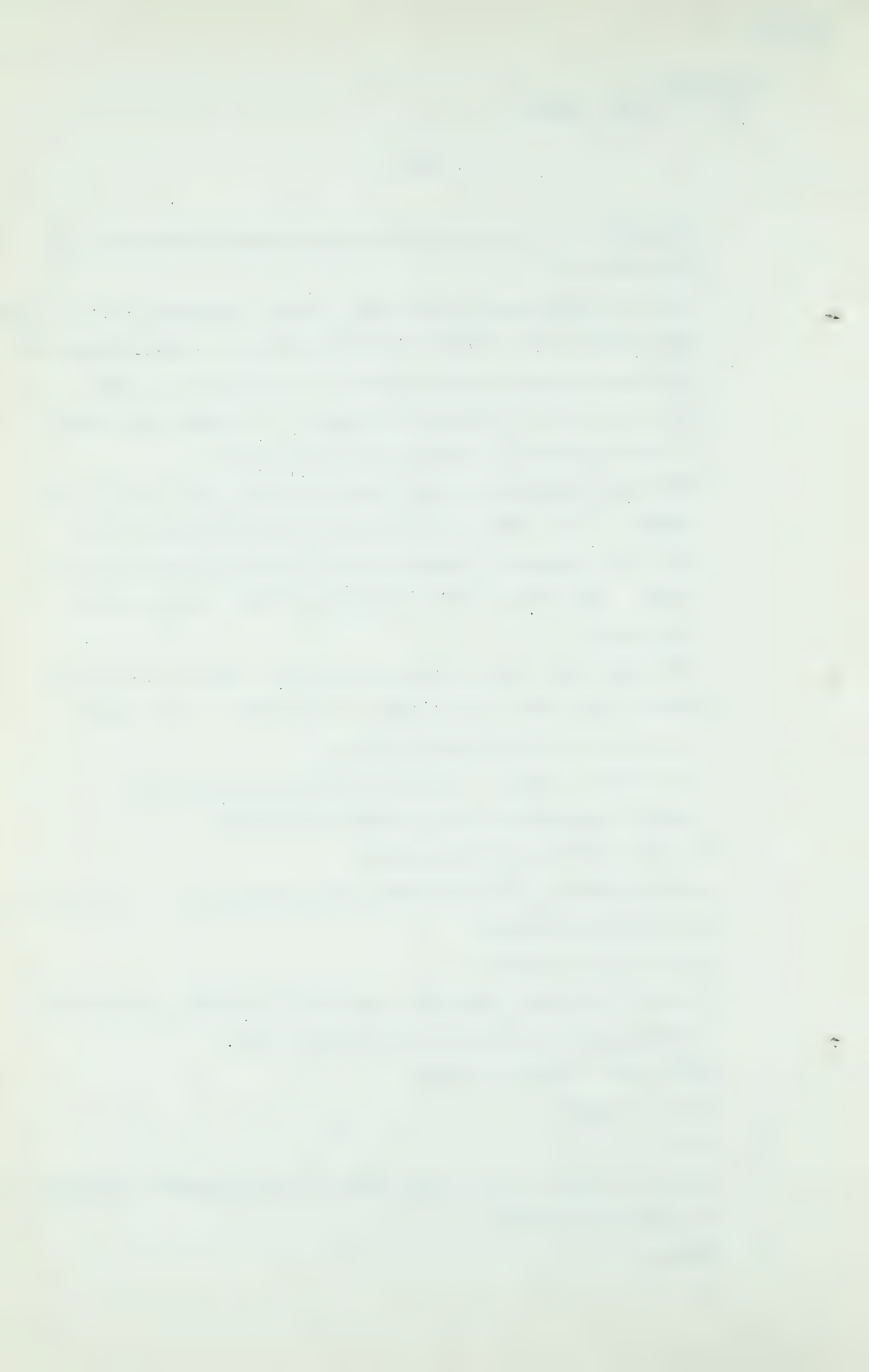
A Well, that is what it says.

Q That is right?

A Yes.

Q And to do that they have the right to interfere with contracts and previous Orders?

A Right.



B. Arney,
Cr. Ex. by Mr. Porter.

- 2824 -

Q Now, I would like to go to this Humble letter for a moment.

A Yes.

Q You live in Texas?

A Yes, sir.

Q And you are aware that the Government of Texas, you are aware of the fact that the Government of Texas, like all governments, looks around occasionally for revenue, to run the State?

A Yes, sir.

Q And I direct you to page 2, section 12, of this Humble letter. I just have one copy, I am sorry; I cannot hand you another one.

A What page?

Q It is page 2, paragraph 12.

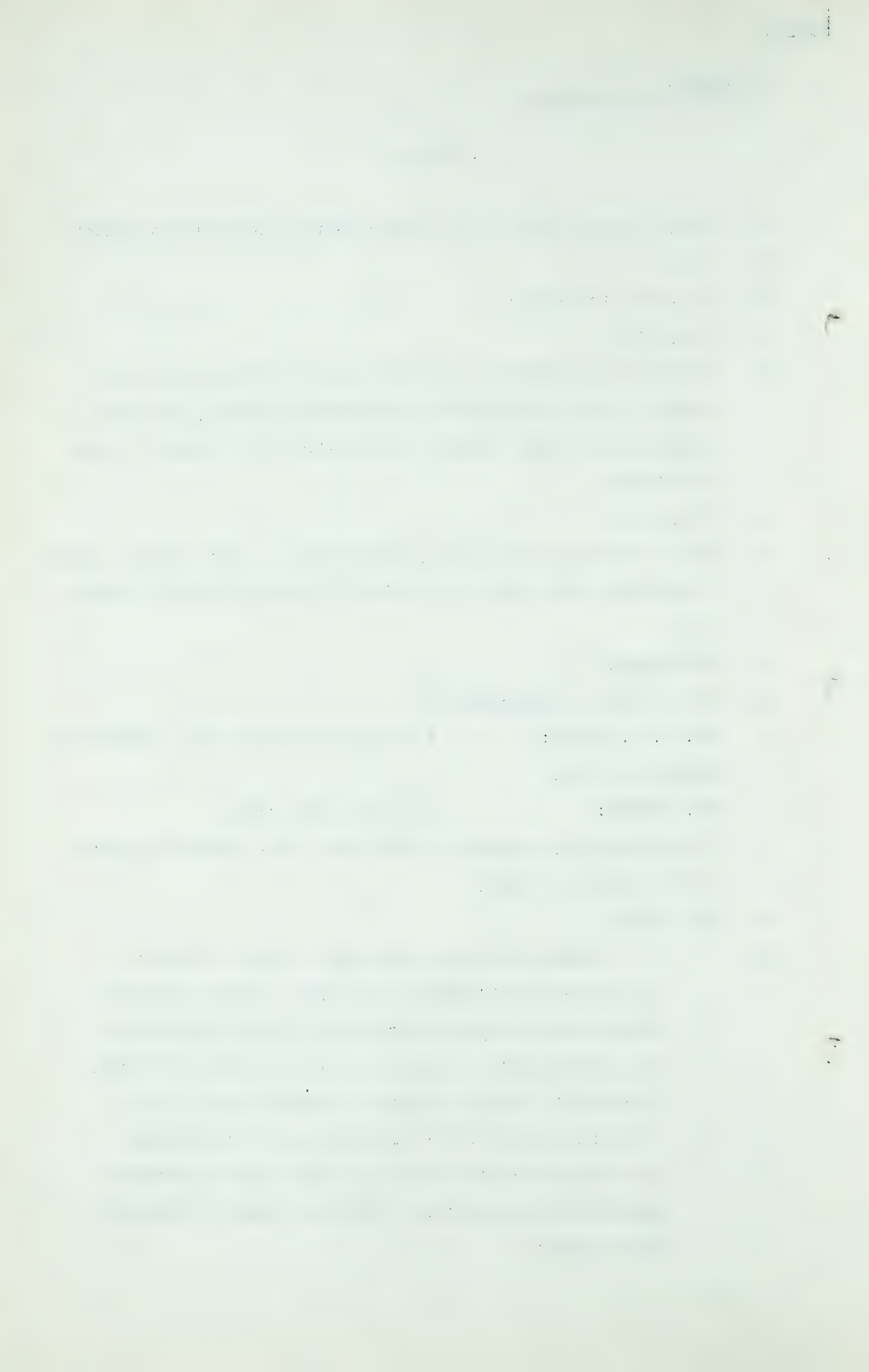
MR. S. B. SMITH: I do not know whether Mr. Arney has read it or not.

MR. PORTER: I do not know either.

Q I will read it, and then I will just ask a general question on the State of Texas?

A All right.

Q " Humble would pay all taxes levied against it as producer applicable on the date of the contract. Prairie would pay any existing or future gathering tax levied against the gas or would reimburse Humble therefor if paid by Humble. Prairie would pay or reimburse Humble for two-thirds of all increased or new taxes levied after the date of the contract against the production, severance, sale or delivery of the gas."



B. Arney,
Cr. Ex. by Mr. Porter.

- 2825 -

What is your tax within the classes covered by Clause 12 in the State of Texas now? What do you have?

A On natural gas, sir?

Q Yes.

A On natural gas we have a severance tax or a production tax. We have had over the years various changes in the rates of our taxes, and we have had them proposed, and we may have some others in the future.

Q What else besides the severance tax?

A This particular tax, I imagine, the tax that Humble has in mind, although I do not know, is this production tax. Now, that has been the only tax on natural gas up to this last year.

Q Yes?

A This last year our Legislature enacted what they called a gathering tax, and that matter, the validity of that Act has not been determined.

Q I see?

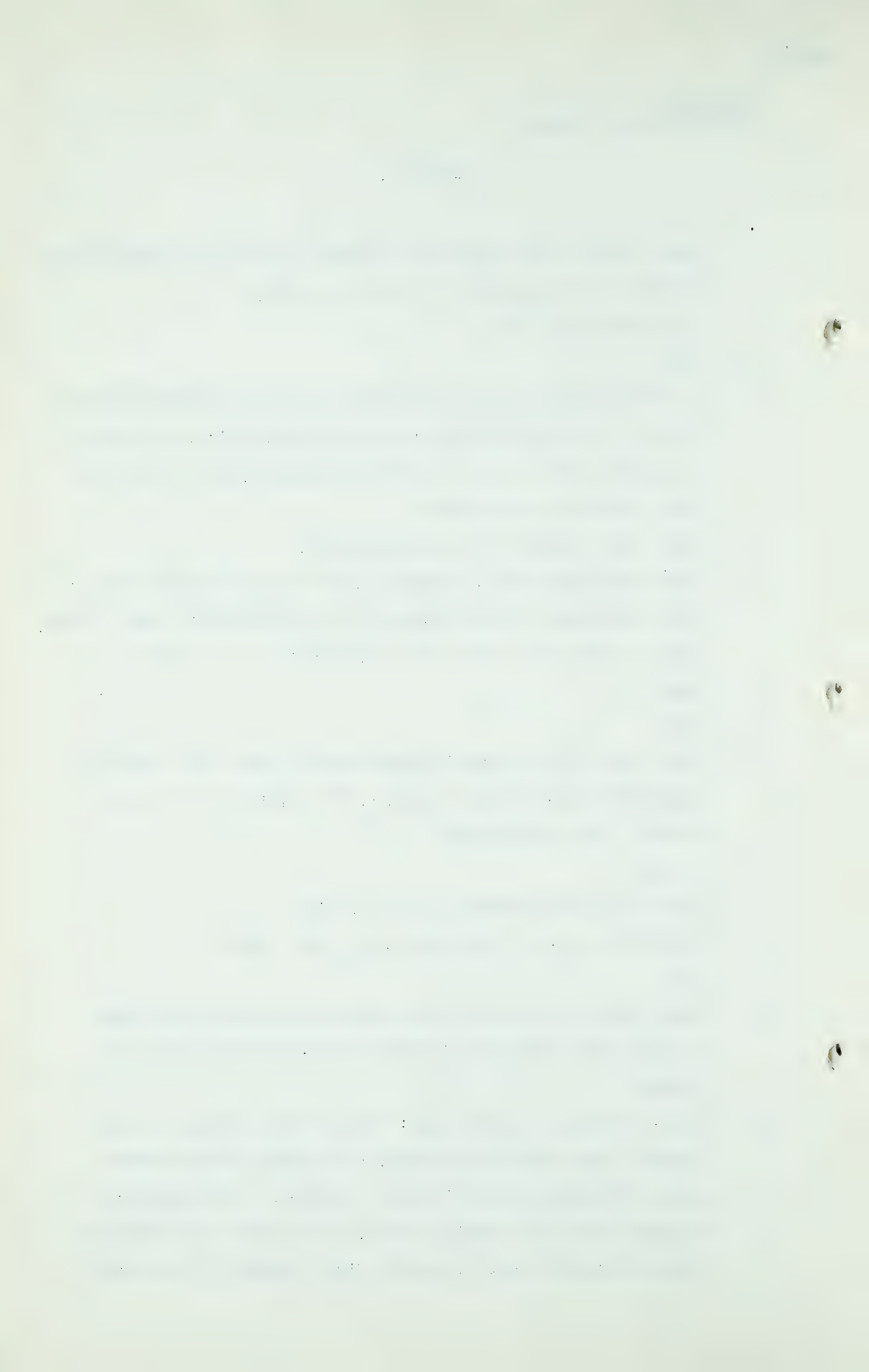
A But it will be probably in 1952, sir.

Q And those are, at the moment, the only taxes?

A Yes.

Q Now, can you give me an idea how much they are in terms of cents per thousand, if that is the way that they are levied?

A Well, I will do it this way: Under the wording of this clause, what Humble has tried, and talking about taxes paid or levied against it, as a producer, this gathering tax that they are talking about, it is not levied against the producer at all, it is the first taking or retention



B.Arney,
Cr. Ex. by Mr. Porter.

- 2826 -

after production under certain conditions. So that what we are talking about at the moment, we are talking about -- what is the price of the gas that you want me to predicate my answer on?

Q I do not know. I do not know whether it was 1/4 of a cent or 1/2 a cent?

A It is based on the price of gas that the producer receives.

Q It is a fraction of the price?

A Yes.

Q What is the fraction?

A Well, I would say in this case, we may be talking about 1/3 of a cent, or something.

Q Yes?

A And Humble has agreed that they will keep paying that. It would all depend upon the actual sales price.

Q Now, I would like to come back to what you told Mr. Nolan about this treaty. Do you still think, having regard to the provisions of section 7(c), that you would not need a treaty to do this thing that Panhandle proposed?

A I said as far as the laws of the United States are concerned I do not think a treaty is required.

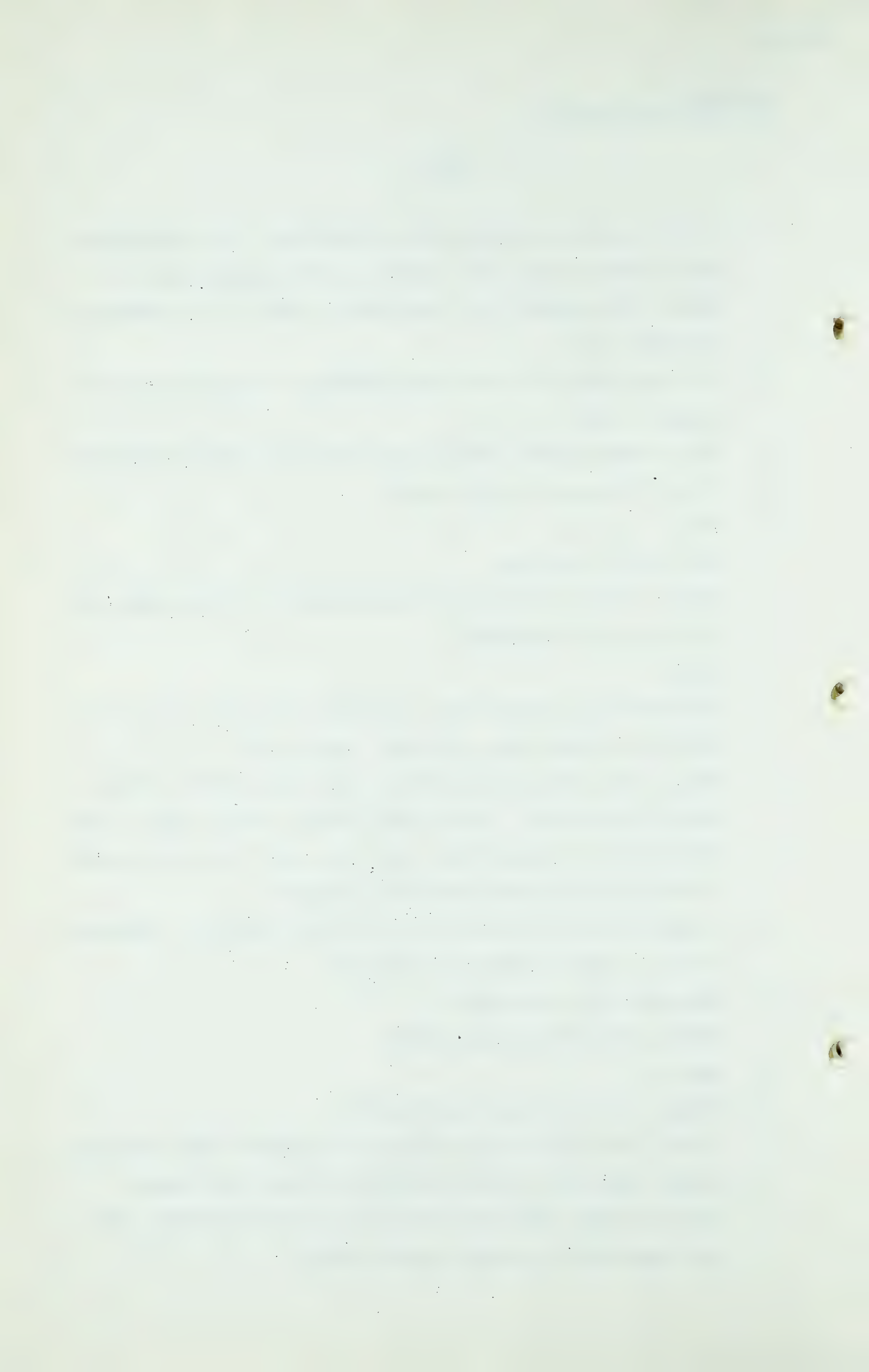
Q What about the customers?

A Whether it would be advisable?

Q Yes?

A Whether it would be of some help?

Q I say, just think of the customer in Ontario that was going to get this gas on a YoYo, whether he would not want a treaty to give him some protection against the right of the Commission to review its own Order?

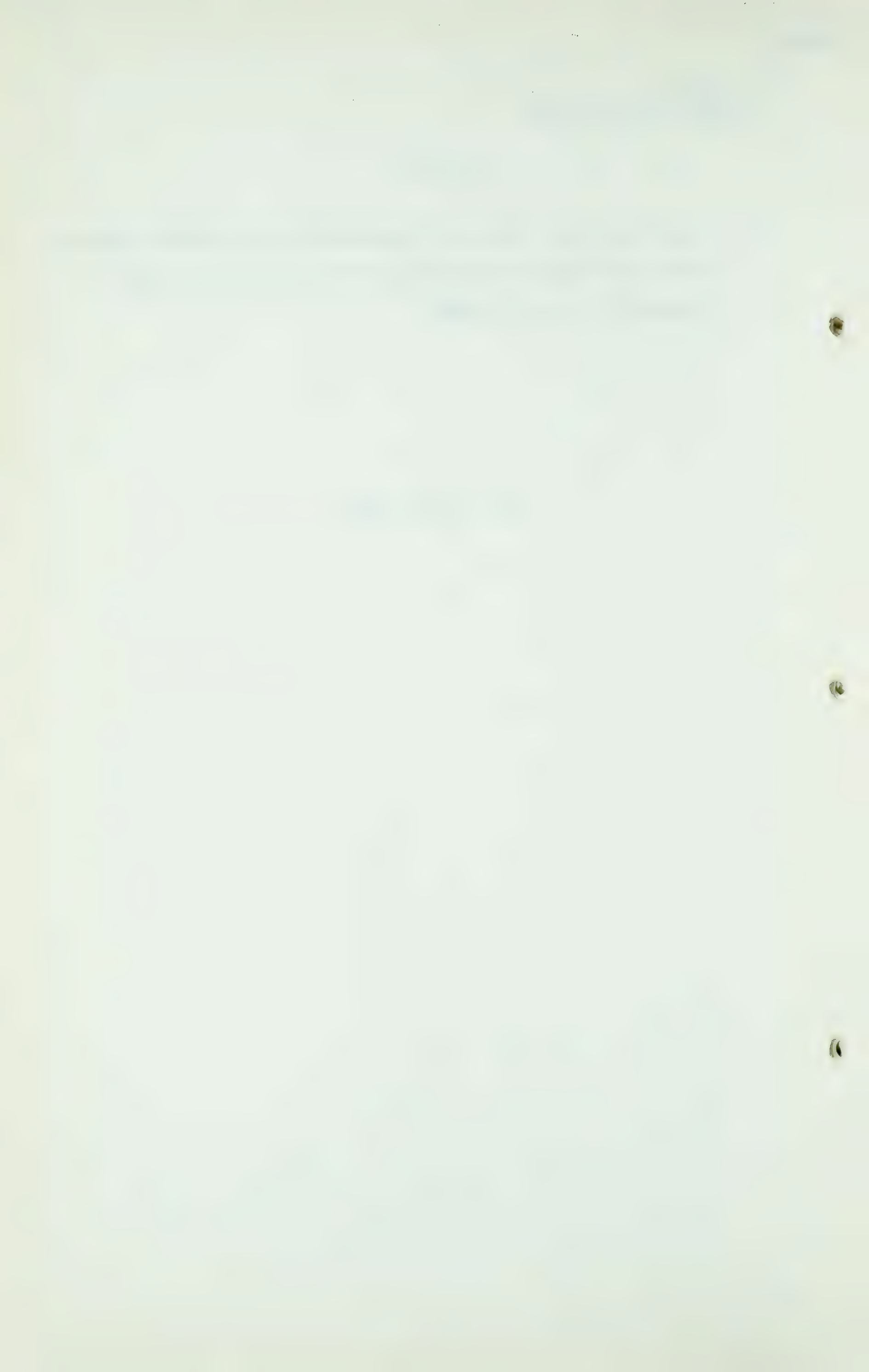


B. Arney,
Cr. Ex. by Mr. Porter.

- 2827 -

A Don't you think that your Commission in its Order to export from here might assure that gentleman in Ontario that he was going to get his gas?

(Go to page 2828.)



Binford Arney,
Cr. Ex. by Mr. Porter.

- 2828 -

Q I am talking about the import to Ontario. We do not have any jurisdiction over what happens in Ontario.

A No, but as I understood the exchange reciprocal agreement they would export the same number of feet that they import.

Q Who is "they"?

A Who is "they"?

Q Yes?

A Well, I thought the Pacific Northwest and Prairie together had submitted this proposal for a reciprocal exchange.

Q Do you or do you not think a treaty would be necessary in view of the provisions of your Natural Gas Act which you agree gives your Board a right periodically to review their own decisions?

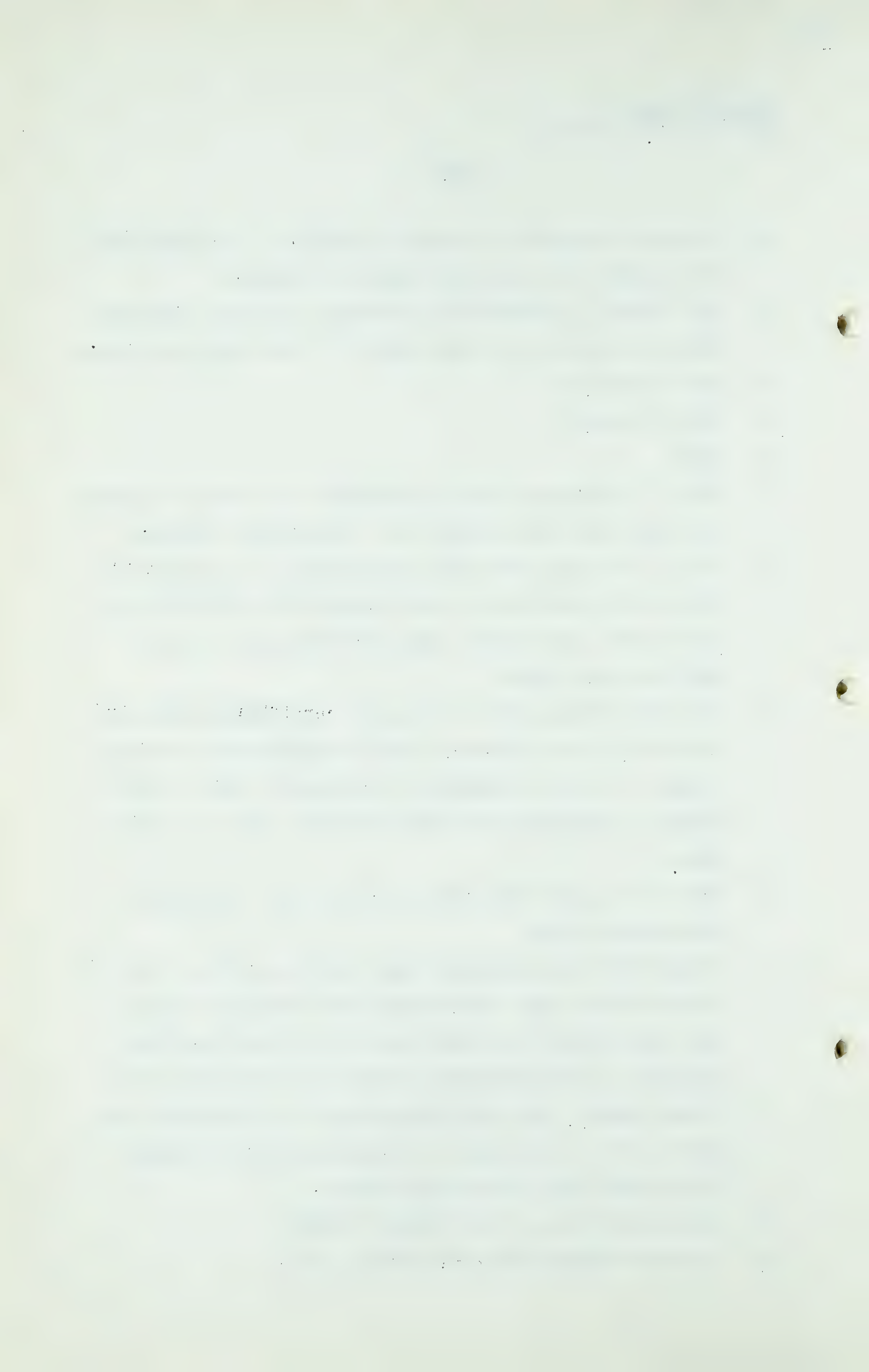
A You were assuming that if you got a **certificate** with conditions that were onerous, then you might prefer having a treaty. I am not assuming you are going to get a certificate of authorization with conditions that are a hardship.

Q But you do agree that they may review that certificate from time to time?

A I agree that they have the legal right to review it but it is my position that the Federal Power Commission before they would ever write that would try to understand the position of both governments without the necessity of a formal treaty, that their order would be a realistic one and it would be designed to mutually protect the people of both the United States and Canada.

Q Did you ever hear of the Fordney tariff?

A I am not familiar with the details, sir.



Binford Arney,
Cr. Ex. by Mr. Porter.
Cr. Ex. by Mr. Bredin.

- 2829 -

Q Well, get familiar with it because after that we do not rely on niceness, we take our legal position by treaty. Thank you very much, sir.

CROSS-EXAMINATION BY MR. BREDIN:

Q Mr. Arney, I think you said you did not think the Federal Power Commission would authorize a permit to export gas to Ontario unless they had a guarantee of 20 years' supply, is that correct?

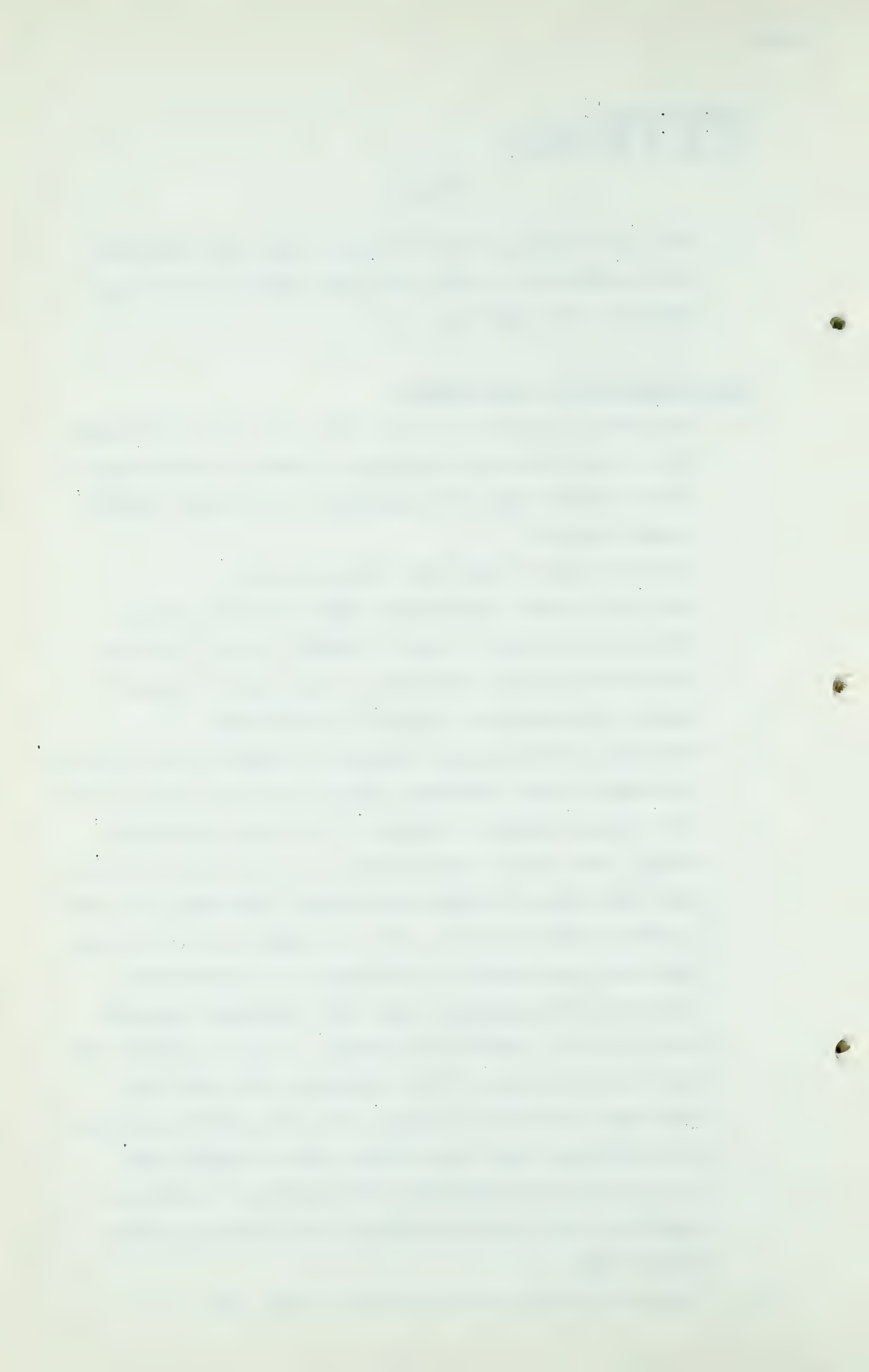
A I did not mean to make that statement, sir.

Q Well, do you feel the Federal Power Commission would authorize the export of gas to Ontario until they had before them a firm commitment of some number of years' supply from Alberta to the Pacific Northwest?

A The term is tied into the economic feasibility of a project. The Federal Power Commission itself would just as soon take a 1, 2-year, 5-year or 20-year. It is your applicants, though, that come in asking for one or the other. Now, in past experience a 20-year gas contract apparently has been a pretty sound projection, and I am familiar with matters that have been handled on the basis of a firm 20-year contract and I understood that this reciprocal proposal was to be for a period of 20 years. I did not mean to say that the Commission, if the applicant could build his lines and only wanted 5 years, I did not mean to say that the Commission would not consider such a 5-year term.

Q Do you think the Commission would consider or that the applicant would consider going to the Commission with a lesser term?

A I do not think any sound applicant would, sir.



Binford Arney;
Cr. Ex. by Mr. Bredin.

- 2830 -

Q Wouldn't the effect of a sound commitment on the part of Alberta be to tie their hands for 20 years as to supply and the price of gas? I am thinking of a situation where after the 15th year the supplies of Alberta became rather acute and that a commitment it had already made to this applicant for 20 years, the effect would be that the consumers of Alberta would be faced with a shortage of gas and an increase in price, or both.

A I have not even considered the possibility of your shortage, sir. I know nothing about your reserves, but I am going to assume that your honourable Commission for whatever period they were willing to enter into a contract would reasonably satisfy themselves that they could contract for "X" feet of gas and that when they did that they would have reasonable expectancy that they certainly had protected the Province of Alberta for its needs.

Q The only thing is that I can not see any applicant going to the Federal Power Commission without a firm commitment as to a number of years?

A I think the applicant should have a firm commitment, sir.

Q And if that applicant has that firm commitment, then this Board has tied its hands if it has committed itself for any number of years?

A Not if its judgment is sound, that it has sufficient reserves to commit "X" million cubic feet a day for 20 years. If they had been mistaken -- when you say "tied their hands" --

Q Yes, I see what you mean.

A On a firm contract, I mean, one that is not rescindable

Binford Arney,
Cr. Ex. by Mr. Bredin.

- 2831 -

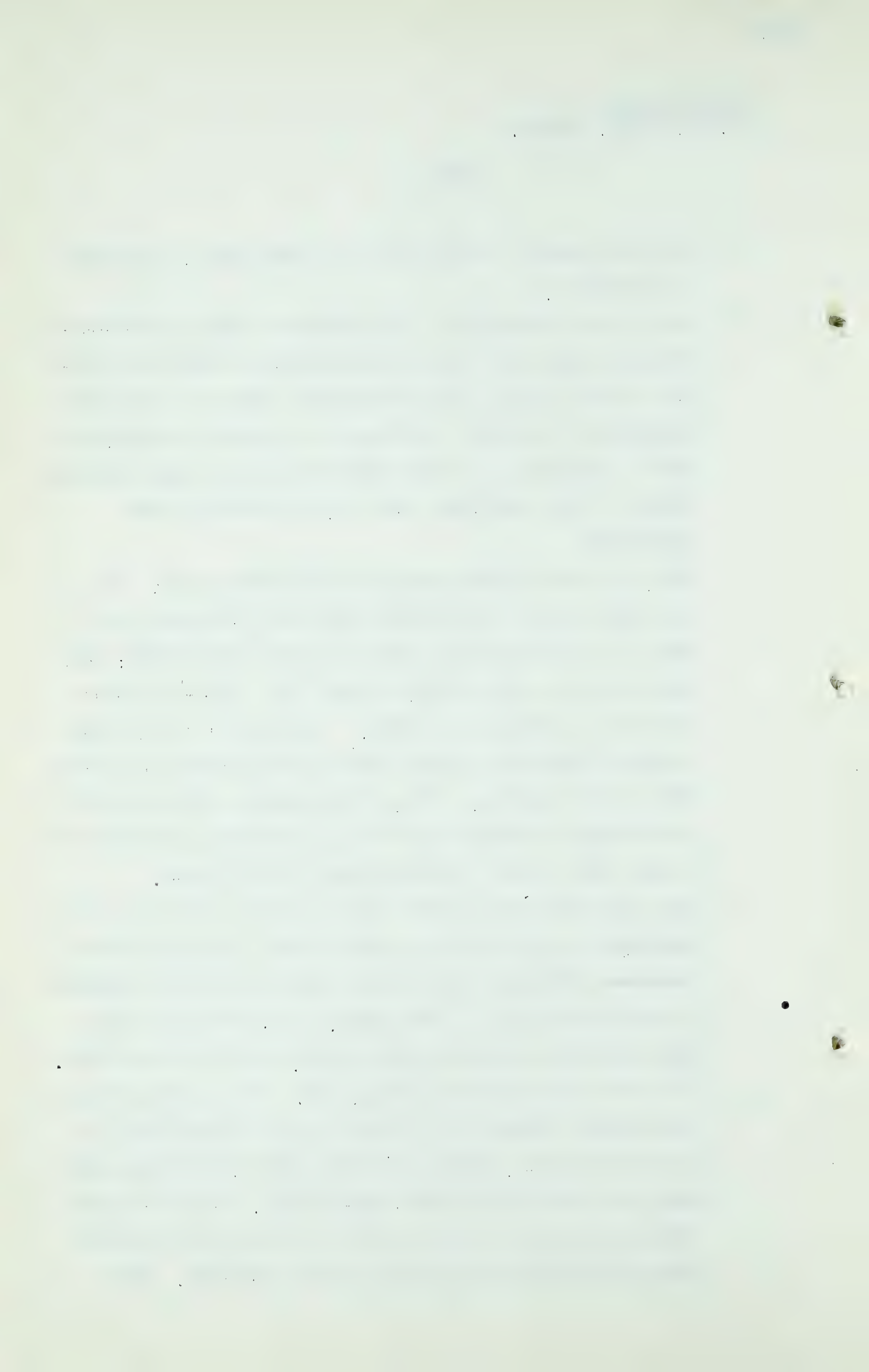
at will, I mean, one that is to be lived up to, deliveries to be made on.

Q Can you see anywhere that this Board can make a commitment without completely tying its hands, such as would be acceptable to the Federal Power Commission? That is, could this Board make its permit conditional on supplies being available? I suggest to you the Board would not accept anything except a firm commitment, that is, the Federal Power Commission.

A Well, it takes folding money to build these lines. You go and issue bonds to build these lines and these men have a right to know they have a sound financial investment; they have to look to the returns of that line over the period of years to retire those bonds. I am sure it is the same in every community, and they have to make certain that they have a firm contract. Now, I am assuming that that would be advisable by everyone who is an applicant, he would want to know that he had a supply of gas for "X" years.

Q The only difficulty is that the only person who has a firm commitment is the holder of those bonds, he has a 20-year commitment from the Board of this Province but the consumer in the Province has no commitment, he must take a second range position and maybe even outside the Board's province.

A I do not quite follow you there, sir. Let us say that you had agreed to enter into a sales for 500 billion feet of gas over 20 years, broken down daily but over 20 years you would sell 500 billion cubic feet of gas. Then let us say that in addition to that 500 billion feet of gas you have another 2 trillion feet of gas in this Province. Your



Binford Arney,
Cr. Ex. by Mr. Bredin.
Exam. by Mr. C.E. Smith.

- 2832 -

local consumers are looking to the 200, they are not looking to the 500 billion under contract.

Q That assumes a set of facts which may or may not be true and I am worried about the state of facts that may not be true.

A Well, I am assuming that there was gas over and above the reasonable foreseeable current needs of the people in your Province.

Q If that is true, we have no concern. We must be sure that that gas is there before we make that firm commitment for 20 years. That is all I think I want to be sure on.

EXAMINATION BY MR. C.E. SMITH:

Q Mr. Arney, I have just one question. Have you Exhibit 95 in front of you, that is the letter from Panhandle to Pacific Northwest?

A I do, sir.

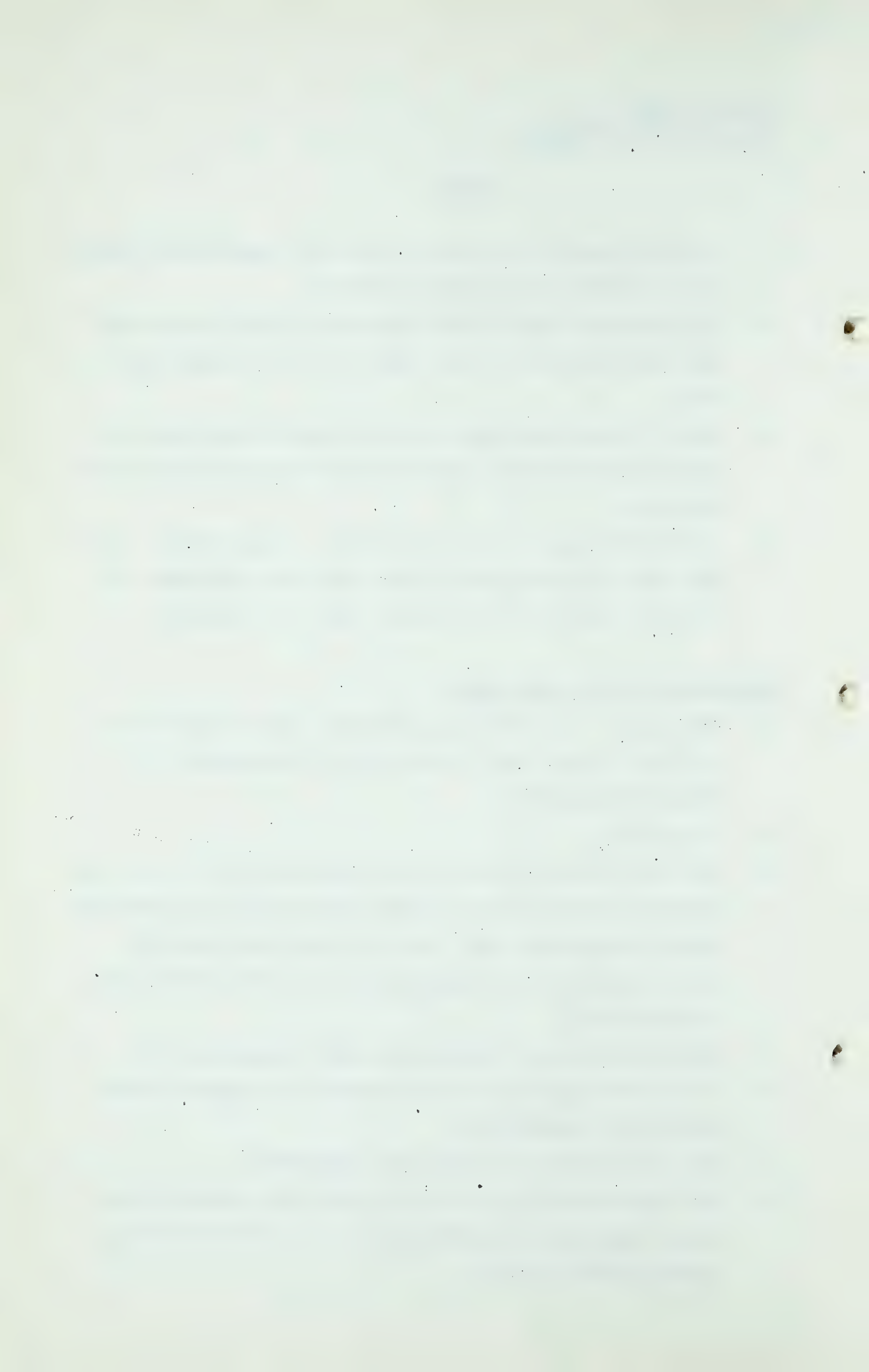
Q In your opinion, Mr. Arney, as a lawyer, would it be a fair inference to think that sub-section (a) was put in there because the authors of that letter had some fear that the F.P.C. might refuse an application or put too onerous conditions on it?

A That could be one inference from that paragraph, sir.

Q I was wondering if I would be unfair if I suggested that might be an inference.

A No, I would say that might be an inference.

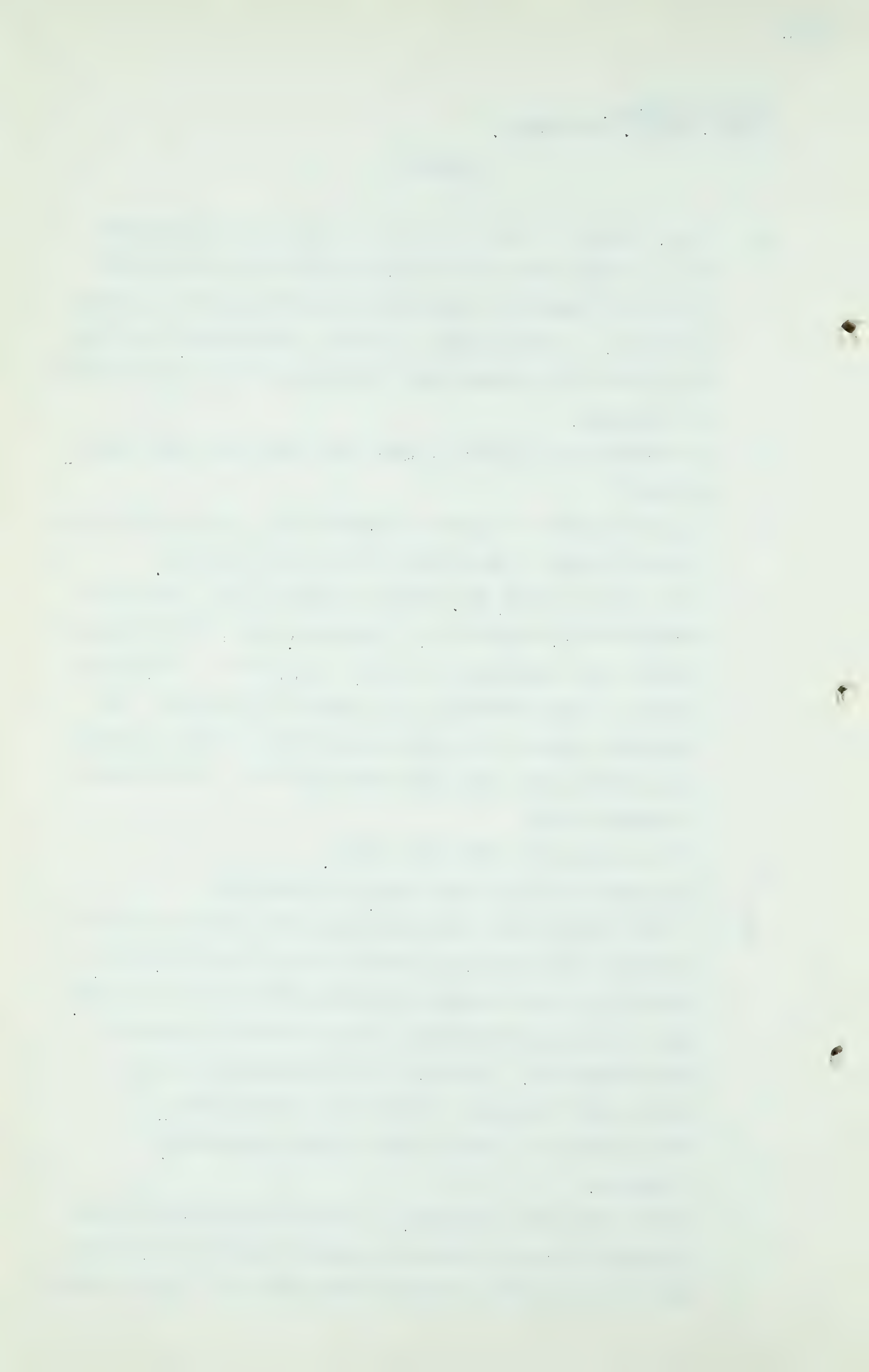
Q As I understand you, in your opinion, with regard to the legal angle only, you think there is no necessity for (a) being in there at all?



Binford Arney,
Exam. by Mr. C.E. Smith.

- 2833 -

- A Yes, I think it does not have to be in as a requirement now. I think that if you did have the treaty you would have the elements of additional compatible with the public interest. In other words, I think a treaty would be helpful before the Federal Power Commission if one could readily be obtained.
- Q It would be so helpful it might give international complications?
- A Anyone involved in export or import would like to have some official stamp of approval of the two governments.
- Q All I have in mind, Mr. Arney, looking at this letter of November 13th, Exhibit 95, I wondered, and I only wondered because I am Commission counsel, I am not for or against anybody, I was wondering if by chance it was fear. The inference seemed to be these people are a little concerned with how far they could get with the F.P.C. Am I unfair to suggest that?
- A I do not know who wrote the letter.
- Q You have already said you were not consulted?
- A I know nothing about that, but certainly on the reason for a treaty I think one could make four or five inferences, and what you have stated certainly could be one inference, that it would be beneficial to them before the Federal Power Commission. Whether it would expedite it or go beyond your inference, I think it is absolutely --
- Q Being beneficial would be true on any application?
- A I think so.
- Q In this particular instance, I had in mind whether or not it would be fair to think or consider whether or not that was not put in there because of the fear of the applicant



Binford Arney,
Exam. by Mr. C.E. Smith.
Re-Ex. by Mr. S.B. Smith.

- 2834 -

before the F.P.C.?

A Well, I certainly can not admit that this applicant has any fear of F.P.C.

Q Well, you would probably go --

A I would say that if it is in there, and I do not know even if I could make inferences as to why someone that I did not know put some particular paragraph in a letter, my inference would have to be that at first blush, at first thinking, they felt before complete analysis that a treaty would be beneficial, and later on, after more study, whether they still desired the treaty or decide it can go ahead without it, that is a matter beyond my personal knowledge, sir.

Q Okay, thank you.

RE-EXAMINATION BY MR. S.B. SMITH:

Q Mr. Arney, the Reynosa export order was made in what year?

A 1946, sir.

Q Export is still going on under that?

A It is, sir.

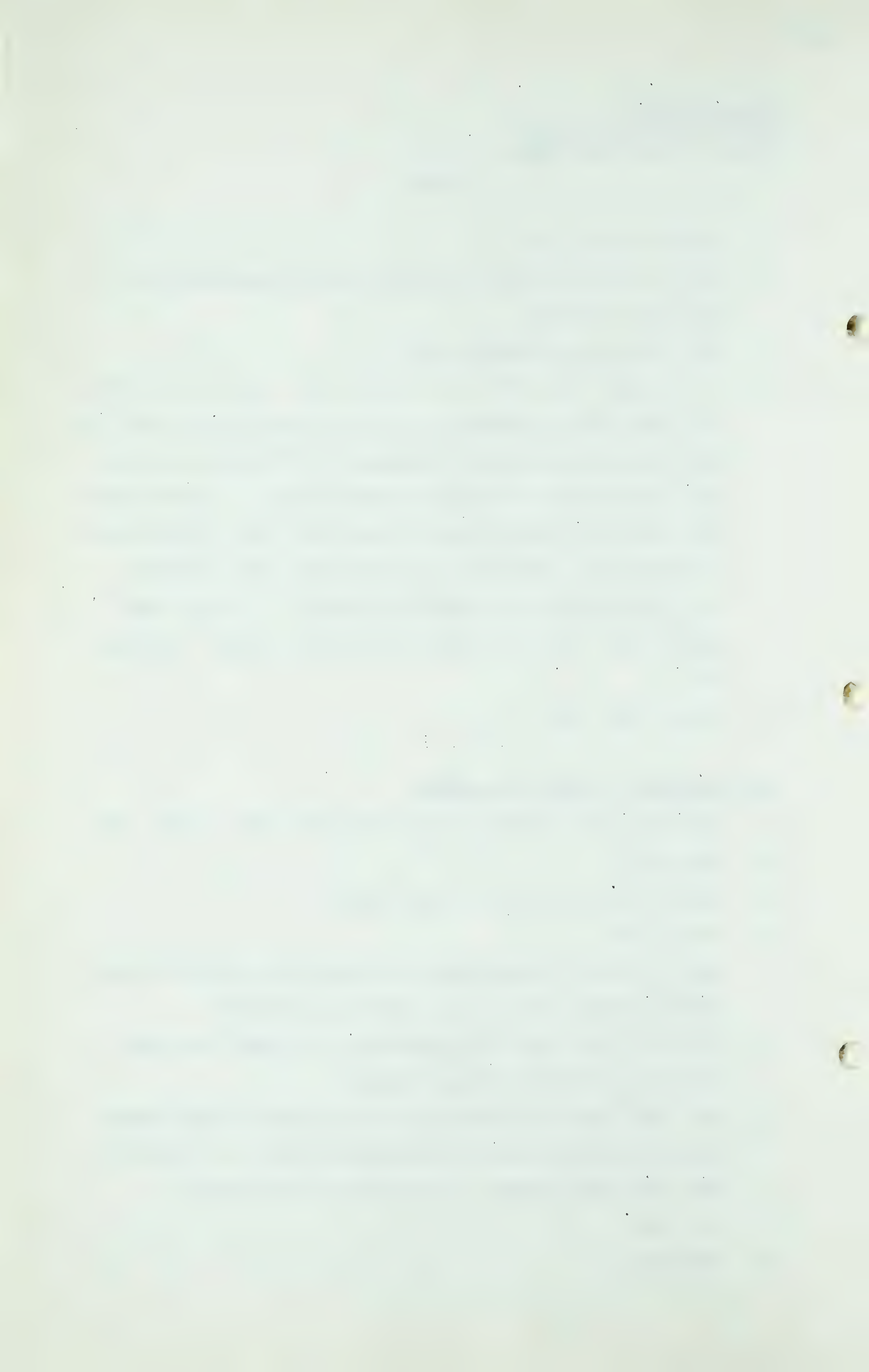
Q Has the order been abrogated or changed in any way by the Federal Power since it was originally granted?

A No, sir, other than for permission to connect one more additional field to the gas supply.

Q Has there been any direction by the Federal Power Commission to take on service to territories in the vicinity of the line within Texas, or anything of that kind?

A No, sir.

Q Thank you.



Binford Arney,
Cr. Ex. by Mr. Porter.
Francis Kernan,
Dir. Ex. by Mr. S.B. Smith.

- 2835 -

CROSS-EXAMINATION BY MR. PORTER:

Q Is there any territory within Texas in the vicinity of the line that has not got lots of gas?

A That has not got lots of gas?

Q Yes. Anybody short of gas who wants to use that line?

A Sir, there is lots of gas in Texas, there is lots of gas in South Texas.

Q Let us get back to Mr. Smith's question, which was, I think, sir, simply, has there been any application by anyone along the line to supply gas from that line?

A No, sir. That was my answer.

Q Is there anyone along that line that has not got gas supplied to him now? In other words, I want to know why he would apply.

A Well, it would have been some utility companies that are serving those communities but they already had their sources of supply.

Q That is the point. All right, sir.

THE CHAIRMAN: That is all, Mr. Arney.

You have got one more witness, Mr. Smith?

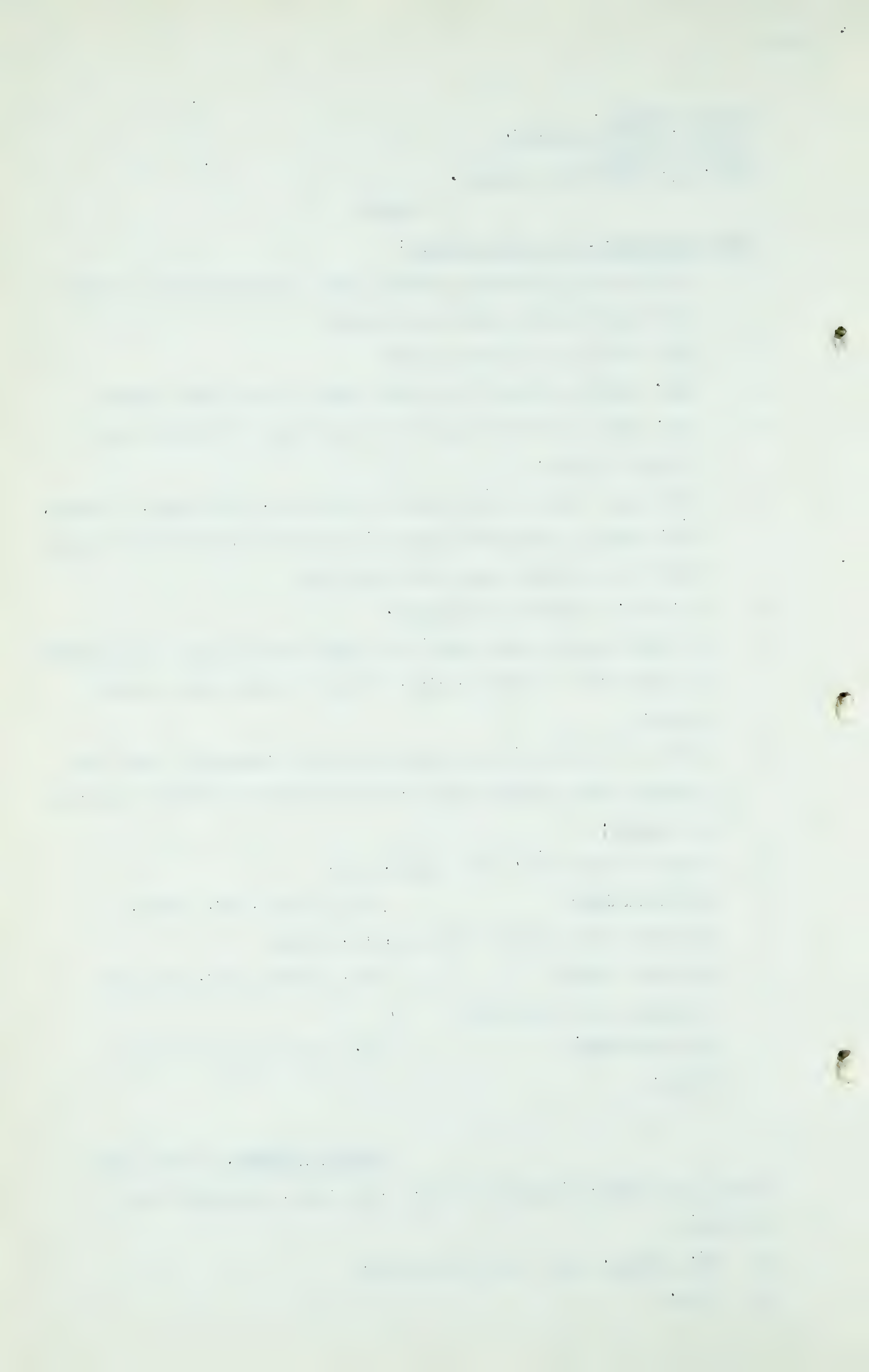
MR. S.B. SMITH: Yes, I have, sir. Are we sitting this afternoon?

THE CHAIRMAN: No. We will go on for a while.

FRANCIS KERNAN, having been first duly sworn, examined by Mr. S.B. Smith, testified as follows:

Q Mr. Kernan, you live in New York?

A I do.



Francis Kernan;
Dir. Ex. by Mr. S.B. Smith.

- 2836 -

Q And you are a partner in the firm of White, Weld & Company, who are investment bankers in New York?

A I am.

Q And you have associated with you in connection with the project of Pacific Northwest and Prairie Gas also the firms of Dominion Security, Dominion Securities in Canada, and Peabody and Company in New York?

A That is correct.

Q You described its detail last year?

A Yes, sir.

Q Your associations are still the same, I take it?

A That is correct.

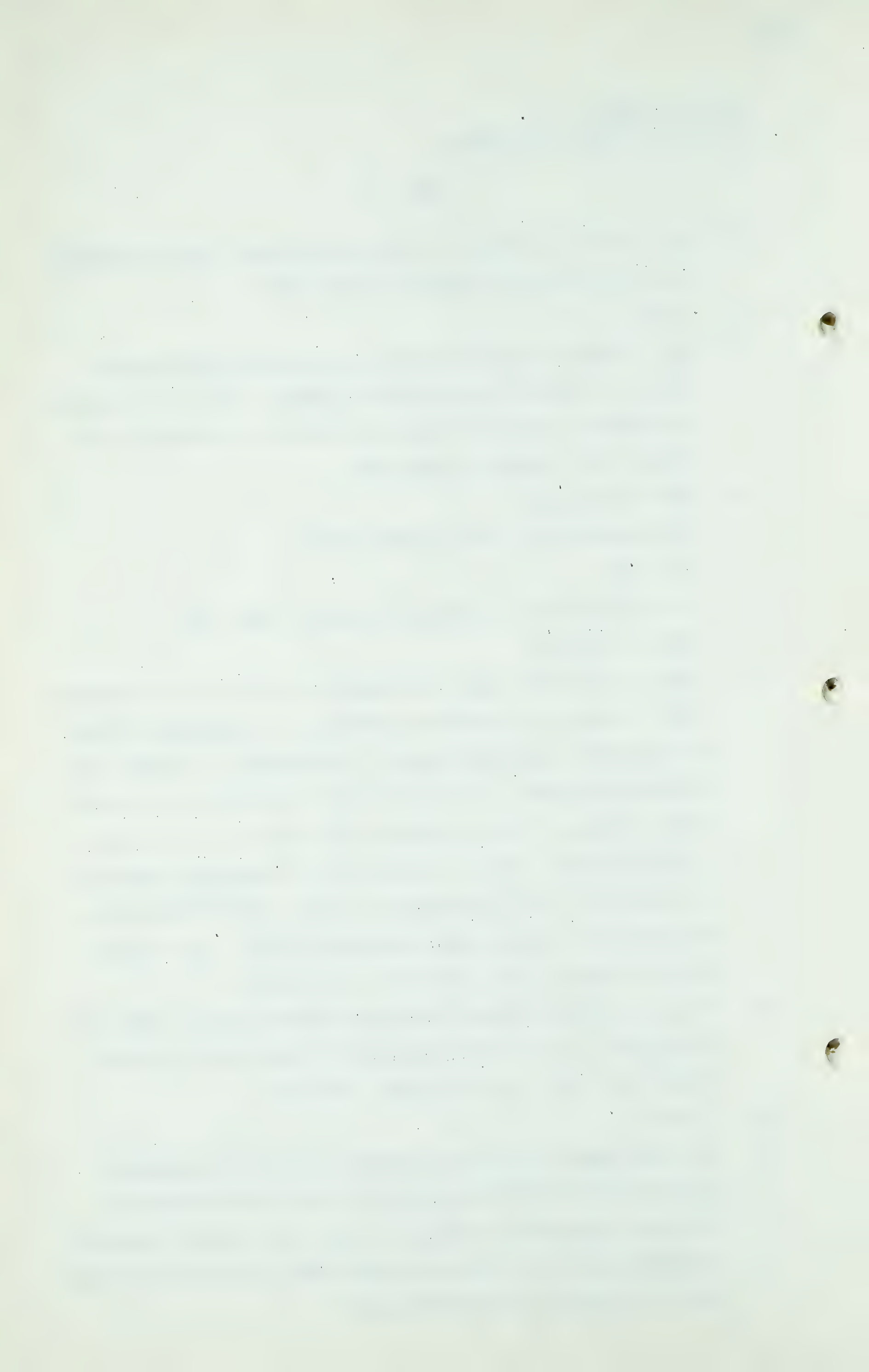
Q When you appeared last year before this Board you testified that you had had extensive experience in financing natural gas pipeline companies and the construction of natural gas pipeline projects. Would you tell us briefly the construction projects of this character with which you and your firm have been closely associated in a financial capacity?

A The Tennessee Gas Transmission Company, Trans-Continental Gas Pipeline Company, East Tennessee Natural Gas Company and the Texas-Illinois Natural Gas Company.

Q Have you given evidence before the Federal Power Commission in support of the financing plans of these and any other companies, that is, natural gas companies?

A I have.

Q In cases where the Federal Power Commission has granted certificates authorizing construction to those companies or other companies for which you have been giving financial evidence, has your firm ever found itself unable to arrange for the financing of such projects?



Francis Kernan,
Dir. Ex. by Mr. S.B. Smith.

- 2837 -

A No. I should add, Mr. Smith, that in one or two cases where financing conditions have changed between the time of the issuance of the certificate and the time of the financing, it was necessary to change the form or the type of the securities with respect to which I had given testimony before the Federal Power Commission. Such changes were approved by the proper regulatory authorities before the financing was carried out.

Q Mr. Kernan, are you familiar with Exhibit 98 in these proceedings with respect to which Mr. Ricketts of Fish Engineering Corporation testified?

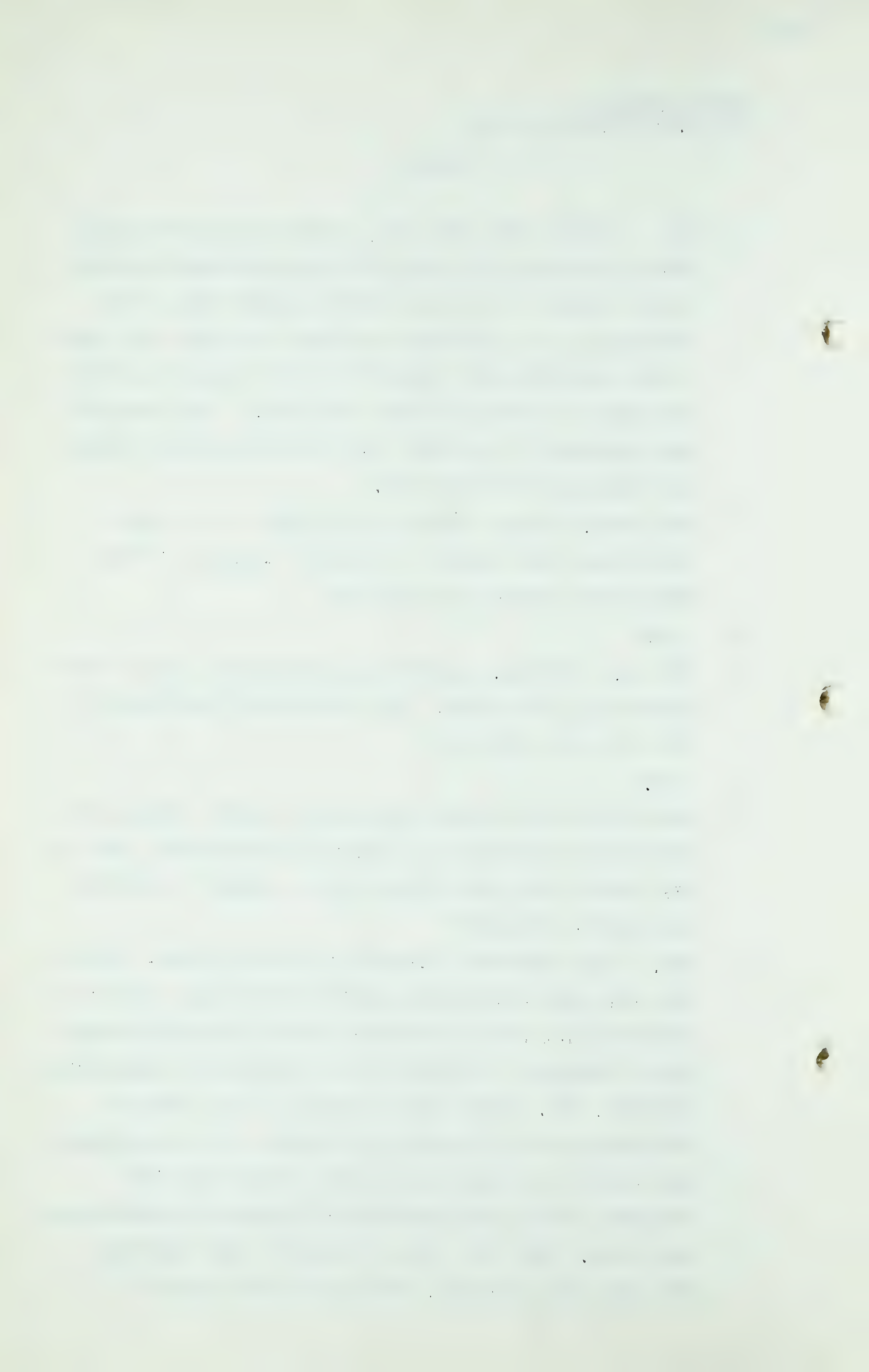
A I am.

Q That is, marketing, engineering and economics study of the proposed gas facilities. Are you familiar with Exhibit 8 that you have before you?

A I am.

Q And have you had any past experience with Mr. Ricketts in connection with natural gas pipeline construction, that is, Mr. Ricketts who gave evidence here on behalf of Prairie and Pacific Northwest?

A Yes. I have known Mr. Ricketts for several years. He did the whole Trans-Continental project from giving evidence on construction costs and economic studies before the Federal Power Commission to seeing the line complete as construction engineer. Mr. Ricketts also assisted in the design of the Texas-Illinois Natural Gas Pipeline. We had him there associated in a financing capacity and was the vice president of the Fish Engineering Company which constructed that line. That line has just recently been completed and gone into operation. That is the line direct to



Francis Kernan;
Dir. Ex. by Mr. S.B. Smith.

- 2838 -

People's Gas, Light and Coke Company, Chicago. In neither instance were Mr. Ricketts' figures too high. In fact, the estimates were very close to the actual construction on both of those projects. In my opinion, he is able, he is obviously experienced, and from a financing point of view he is entitled to reliability.

Q Mr. Kernan, are you familiar with the fact that the Prairie Gas lacked contracts for the full requirements of their purchase of gas in connection with these applications?

A I have so been told.

Q And you are familiar, I believe, also, with Exhibit 94, which was Mr. Herring's submission covering the reciprocal exchange project?

A Yes.

Q And you are familiar with the fact that Mr. Herring and Mr. Ricketts have testified that the 33 to 34 cents charge for gas and the marketing moneys as set forth in Exhibit 94 is based on gas delivered at Pincher Creek field at pipeline pressure for either 10 or 11 cents, depending whether you took the 33 or 34 cent charge, and sold on an 85 per cent load factor, using the service cost as outlined in Exhibit 98?

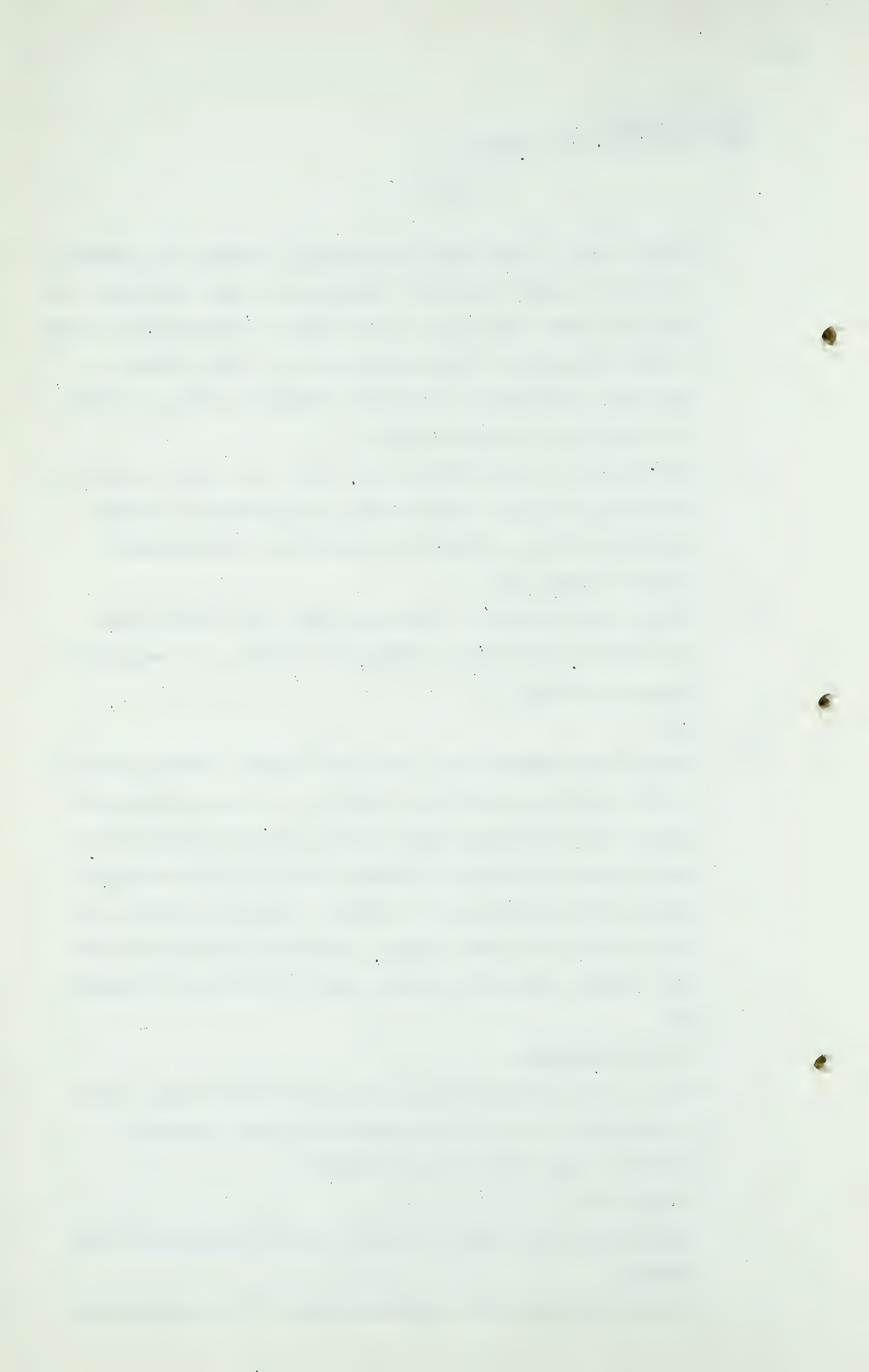
A I am so familiar.

Q What is your understanding of the load factor which would be required of the utility companies in Mr. Ricketts' opinion to meet the 33 and 34 cents?

A 70 per cent.

Q And how would the pipeline operate at an 85 per cent load factor?

A By sales to industrial companies east of the mountains at



Francis Kernan;
Dir. Ex. by Mr. S.B. Smith.

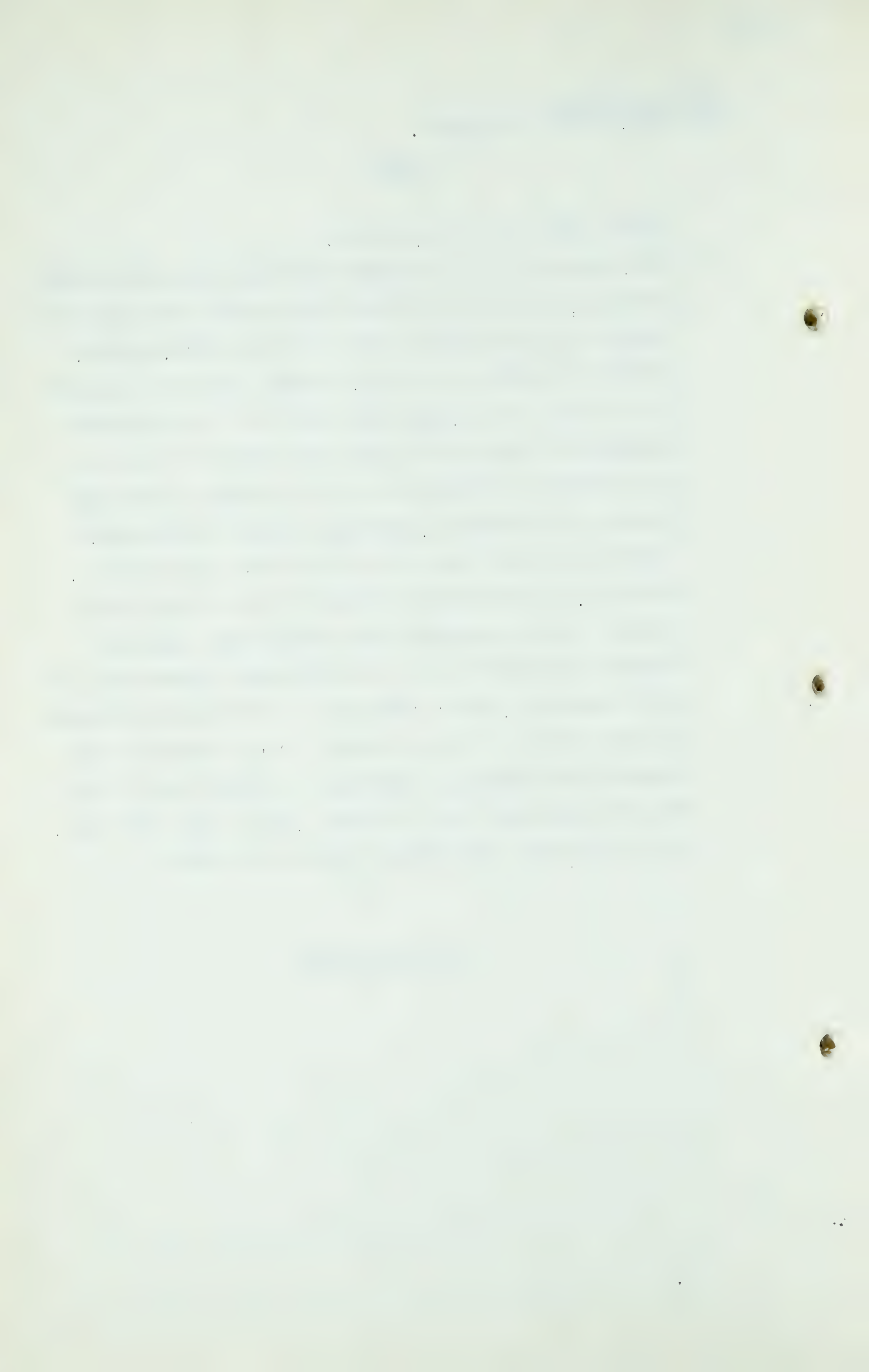
- 2839 -

higher than the utility price.

Q Mr. Kernan, besides necessary Provincial and Governmental permits, what will be necessary for Pacific Northwest and Prairie to justify your opinion that the \$85,528,000.00 project, testified to by Mr. Ricketts, could be financed?

A In the first place, there would have to be satisfactory 20-year contracts for the sale and purchase of gas at a price starting initially at 10 or 11 cents, as the case may be, or in between, depending on what the marketing companies agreed to pay, on a 70 per cent load factor, that is, 10 cents would correspond to the 33 and the 11 cents to the 34, together with satisfactory engineer's reports on 2 trillion feet of proven gas reserves back of such contracts, and the dedication in satisfactory fashion of such reserves to the contract; (2) satisfactory contracts by the marketing companies to purchase gas at the 33 or 34 cent price or in between, as the case might be, on a 70 per cent load factor, take or pay basis.

(Go to page 2840)



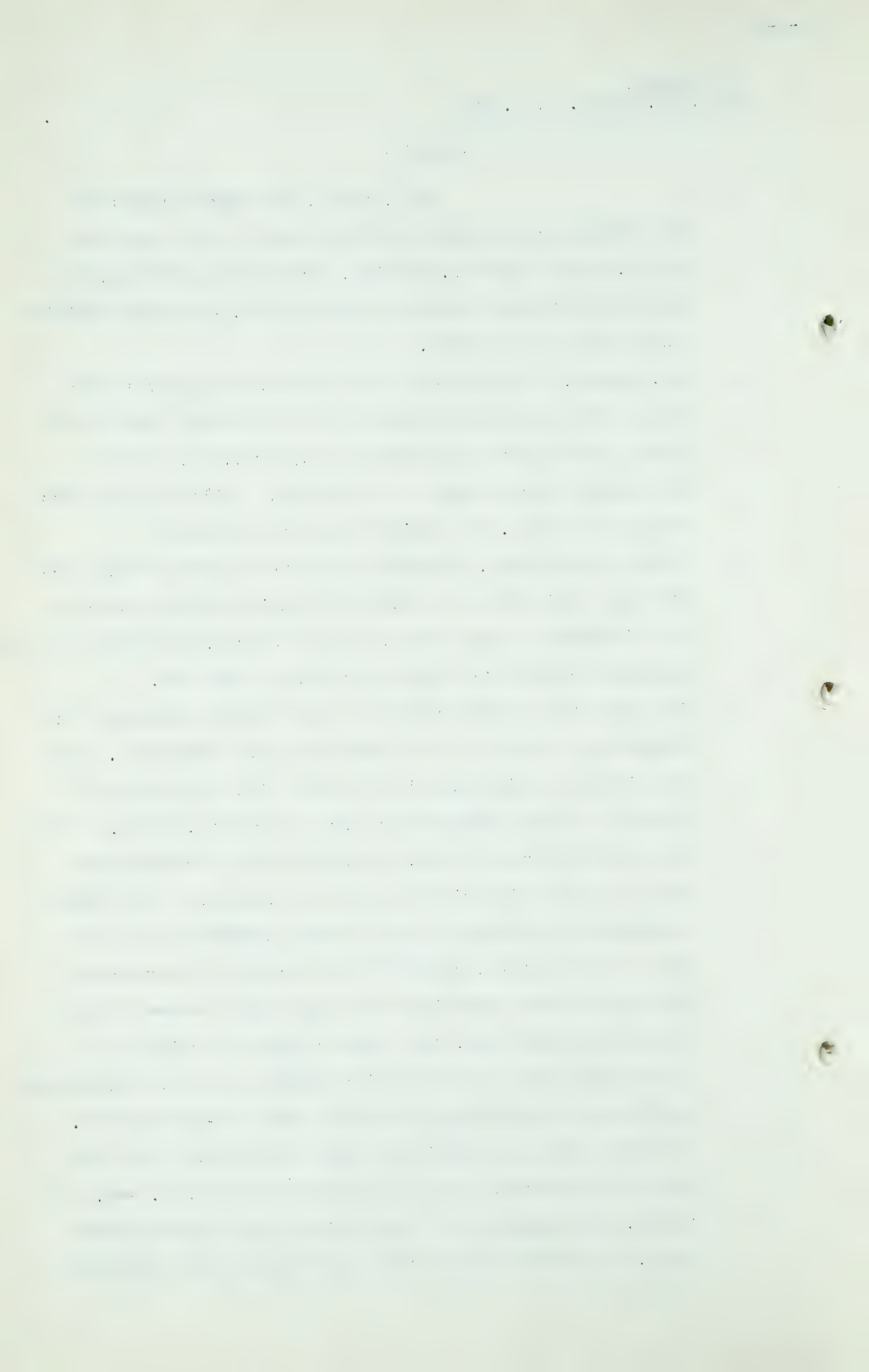
F. Kernan,
Dir. Ex. by Mr. S. B. Smith

- 2840 -

And, third, the signed report of Fish Engineering Company, having regard to the testimony of Mr. Ricketts and Mr. Herring, stating the position, as they have already explained orally to me, on which Exhibits 94 and 98 were prepared.

Q Mr. Kernan, I would like to ask you something about your figure of reserve requirements of 200 million a day for 20 years, which is the equivalent of $1\frac{1}{2}$ trillion, and you mentioned a requirement of 2 trillion. Will you give your reasons for that, for having chosen that figure?

A In the first place, financial institutions are getting more and more insistent on a cushion in their reserve estimates for financing any pipe line, and, of course, bond buyers are more diffident at this time than they were a year ago. I feel that the 33-1/3% cushion is practically essential for financing a project of this magnitude, and character. And my opinion on this point is even more firm on account of Section 9 of The Conservation Act in Alberta, which, I will be perfectly frank to say, has worried me in reaching an opinion on the financibility of this project. I think that a substantial cushion in the reserves dedicated to a project of this nature, could be very helpful in persuading institutions that anything that might happen under Section 9 would not hurt them, and I have reached my opinion of the financibility of this project based on a very substantial cushion for the necessary reserves over a 20-year period. I realize that the question in that connection is not for me to have decided, but it is raised in Section 9, and, of course, the financing of this project that we are talking about, you would have to have the Federal Power Commission



F. Kernan,
Dir. Ex. by Mr. S. B. Smith

- 2841 -

licence, and there is the question as to what the Federal Power Commission will say about that particular section. I do not know of any section exactly like that, or any condition in the contracts that they have been faced with before.

I have had several jousts with Mr. McGrath, who is sitting here in this Court room, before the Federal Power Commission, and I feel confident that Mr. McGrath, when he leaves Calgary, will have in his brief case a copy of Section 9, and I think he will call it to the attention of the Federal Power Commission with regard to anybody that starts to try to export gas into the United States from the Province of Alberta. I do not know what the decision will be, but I raise that question.

Q. Well, in your view, would the reciprocal exchange features of the proposals of these companies help at all with regard to financing and before the Federal Power Commission?

A. Well, there is not any question but what it would be of material assistance.

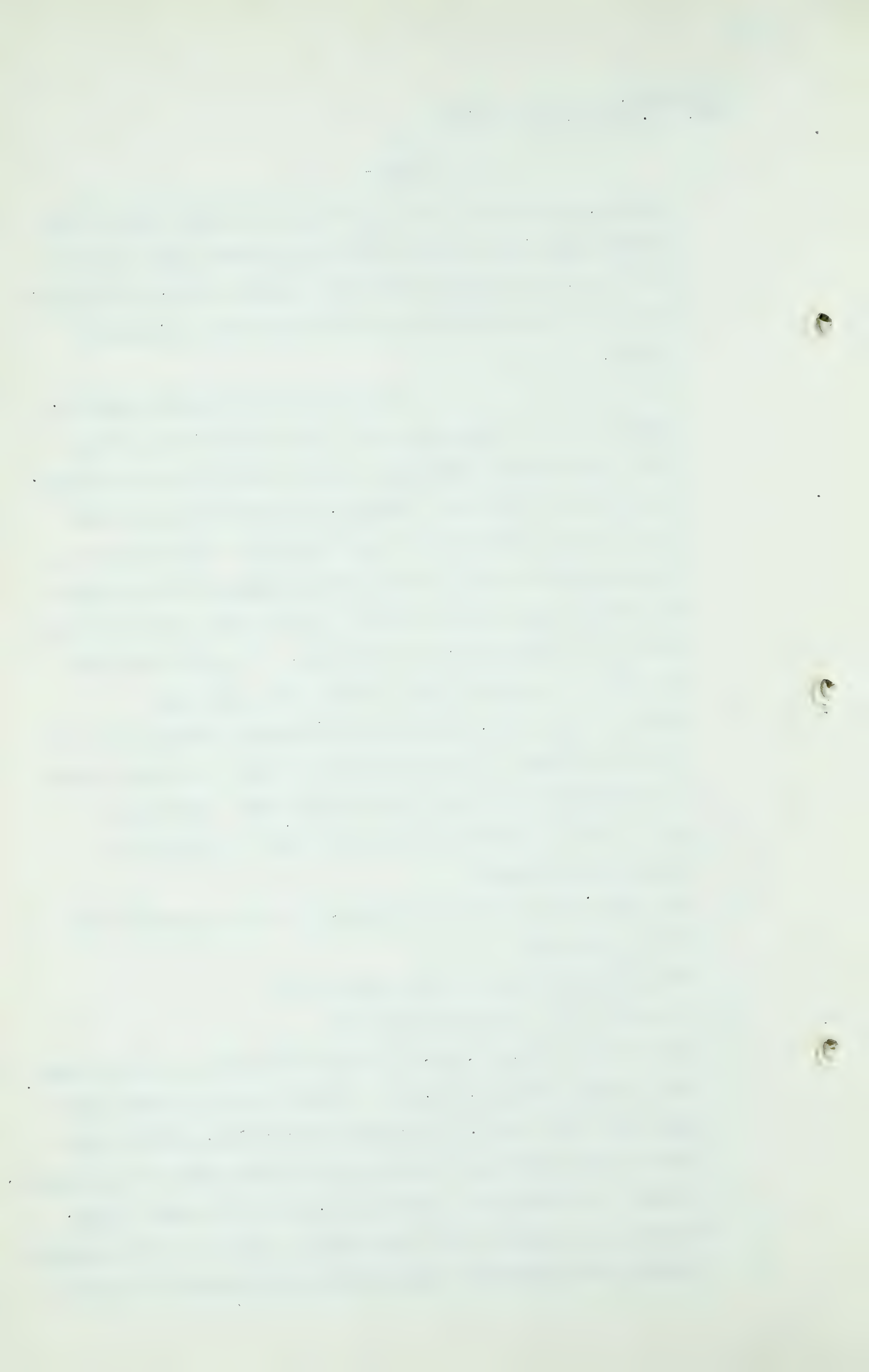
Q. What have you to say, Mr. Kernan, as to the financibility of the projects?

A. Well, in what way as to the financing?

Q. Generally as to the financibility?

A. Well, of the \$85,000,000.00 I would recommend to the company that roughly \$64,000,000.00 or 75%, be sold on first mortgage pipe line bonds, 10% on preferred stock, and the preferred stock would have to have some common with the preferred, to make it attractive, and \$13,000,000.00 of common stock.

Q. And are you familiar also with Exhibit 99, that is the exhibit dealing with Marketing, Engineering and Economics in Western



F. Kernan,
Dir. Ex. by Mr. S. B. Smith
Cr. Ex. by Mr. Porter.

- 2842 -

Canada, of the facilities, of the proposed facilities
of these companies?

A I am.

Q Would you give us your idea about financing that project
of about \$54,000,000.00 estimated cost?

A Subject to having all necessary Governmental permits, and
subject also to a contract with Panhandle Eastern of around
33½ cents per thousand, and assuming that the Panhandle
has its Federal Power Commission certificates, and assuming
that the contracts for the sale of gas are in keeping with
the cost of service as that filed in Exhibit 99, I am
of the opinion that such a project can be financed.

Q Will you answer other counsel, Mr. Kernan?

A Yes.

.....

CROSS-EXAMINATION BY MR. PORTER:

Q Mr. Kernan, there is one thing I would like to mention to
you, because we were discussing it here this morning, and
it comes to me because of your reference to Section 9, and
Section 9 of The Conservation Act is the one under which the
limiting factors are imposed on the permits, is it not?
They may cut the amount and they may cut the time.

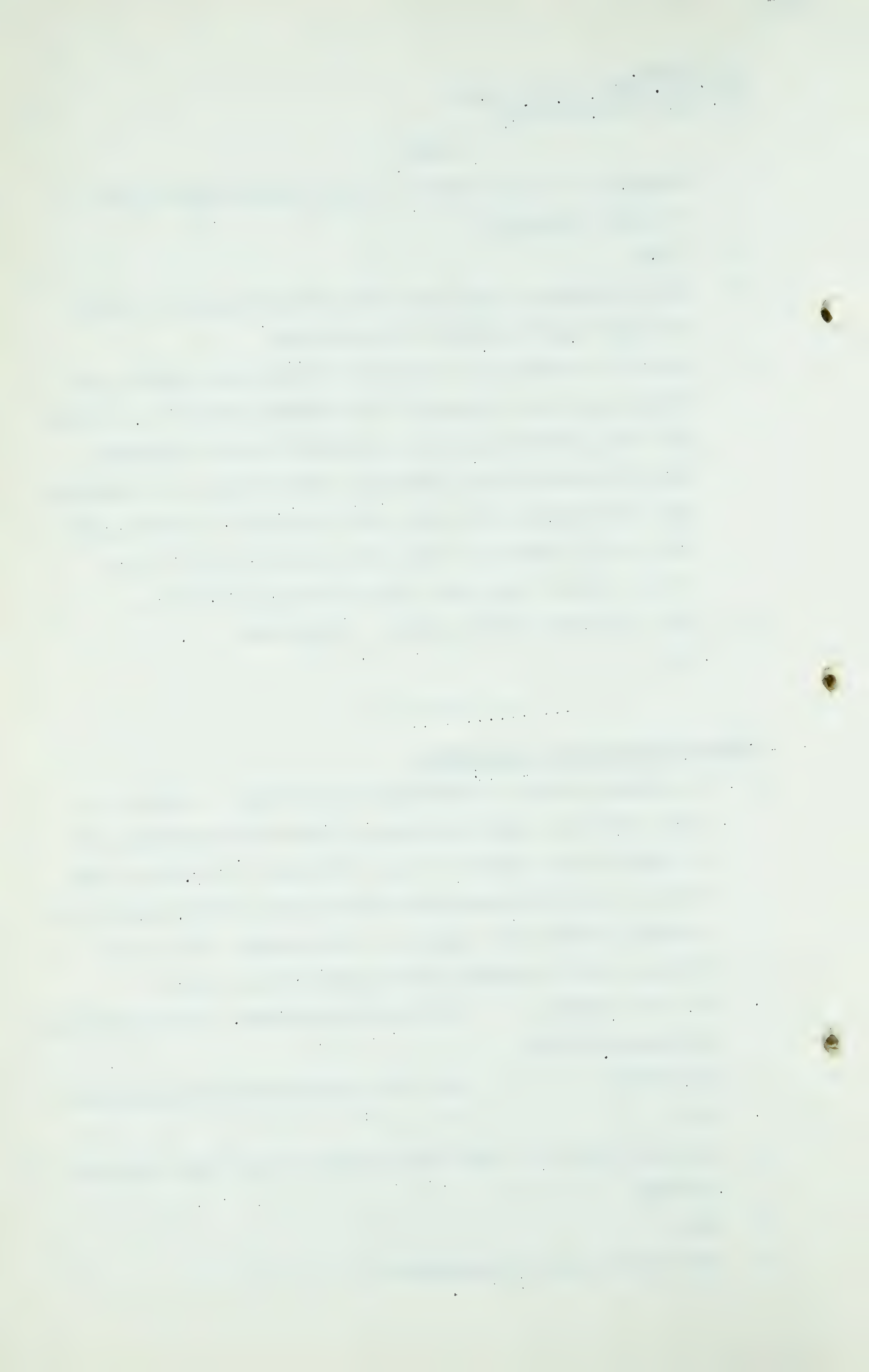
MR. C. E. SMITH: You are talking about the Gas Resources
Preservation Act.

MR. PORTER: Yes, The Gas Resources Preservation
Act.

A Section 9 has to do with the emergencies and other circum-
stances.

Q Yes?

A That is the one I am speaking of.



F. Kernan,
Cr. Ex. by Mr. Porter.

- 2843 -

Q You do not have that in the statute in the United States? Have you nothing like that with regard to the Federal Power Commission's powers?

A I am not an authority on the law.

Q I am just going to read it to you. We ran into it this morning. I will read it to you, and you see if you notice any similarity between this language and Section 9 of The Gas Resources Preservation Act?

A I would not be qualified to say.

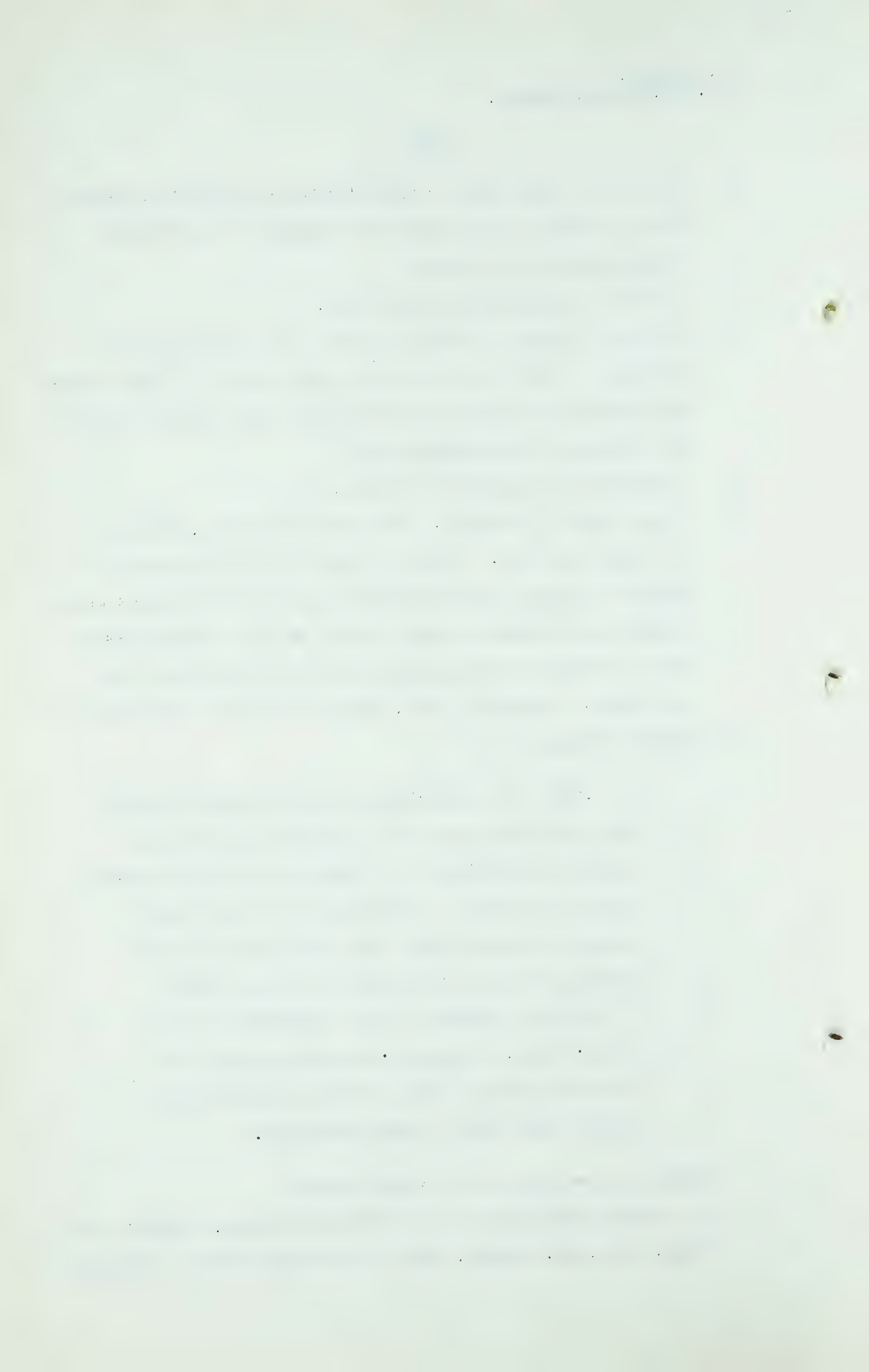
Q I just want to read it. You know Section 9, and you do not know this one. I want to read it to you because I am going to suggest to you that the way that the Federal Power Commission attains the same object, as is contemplated by The Gas Resources Preservation Act is by putting it in its Order. Listen to this, and this is with reference to export of gas,-

" . . . that the authorization hereby granted shall not constitute ground or justification for any refusal by applicant to transport or sell natural gas to any person or municipality at any time during the term hereof, for consumption in the United States by such person or municipality, it being the intent of this authorization that at all times, persons and municipalities in the United States are to receive preferential service over that to Gas Industrial."

Had you ever seen one of those before?

A It could refer also to our Pacific Northwest, couldn't it?

Q Well, this, Mr. Kernan, that I am reading from is actually



F. Kernan,
Cr. Ex. by Mr. Porter
Cr. Ex. by Mr. Nolan

- 2844 -

a Mexican case.

A A Mexican case?

Q Yes, the Reynosa case??

A No, I am not familiar with it.

Q It does contemplate the same kind of interpretation that Section 9 does?

A Well, that is why I say the reciprocal exchange might be a problem to the Federal Power Commission.

Q Well, I am interested in that, that the reciprocal exchange might be a problem to the Federal Power Commission, because the reciprocity is not the same thing between people whose stove is frozen. Let me put to you this point: We get it about 40 below zero up here, and suppose we run short of gas some day, do you suppose that becomes someone in Ontario is warm that we have worked out a reciprocal arrangement?

A I would not know. I am just a financing witness.

Q When you talk about a reciprocal arrangement, it contemplates a mutual, or mutuality. Now, I suggest where we have one person giving up the gas for the benefit of another, that mutuality does not exist?

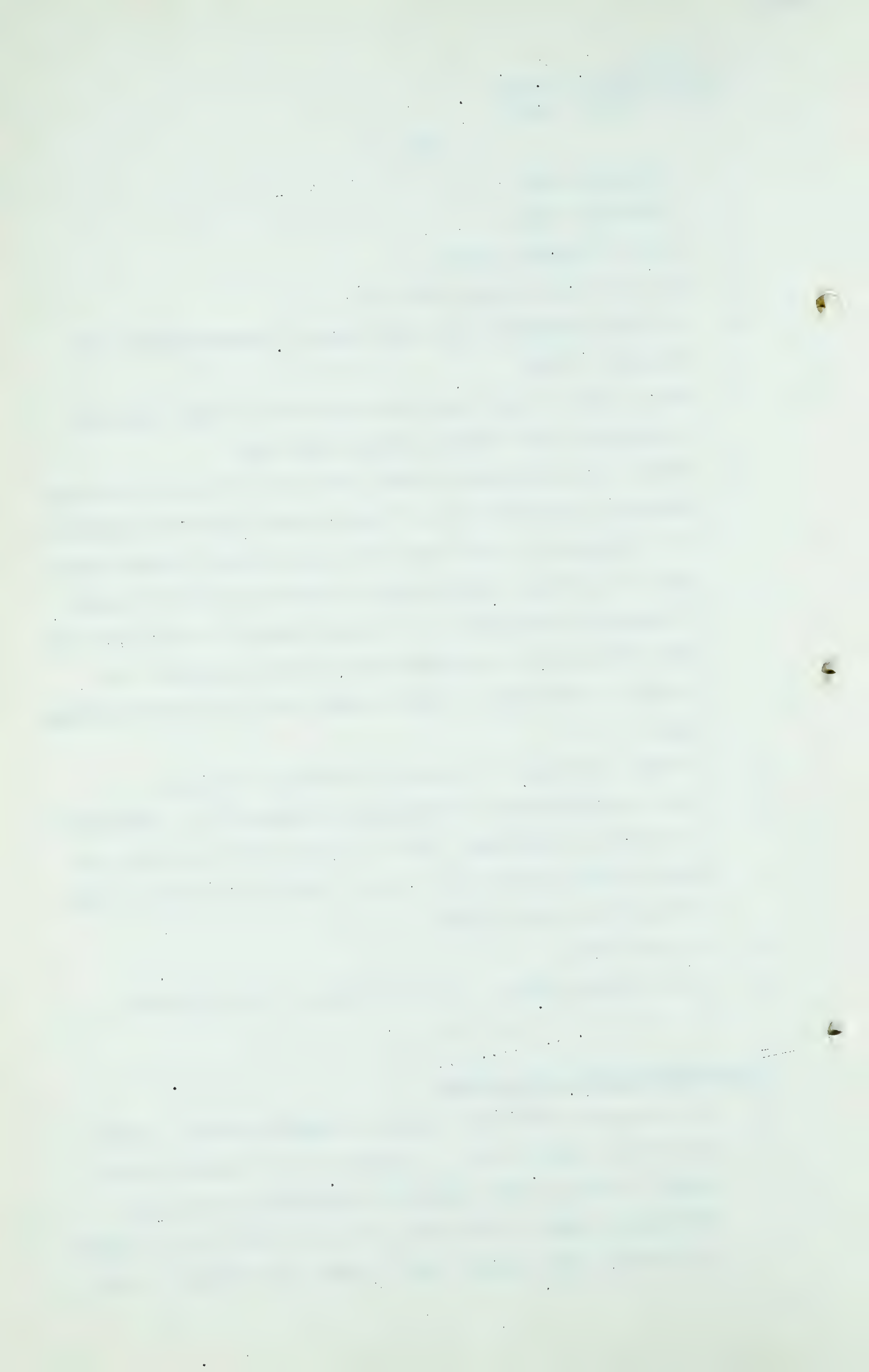
A I do not know.

Q I don't know either. I do not think it is reciprocal.

.....

CROSS-EXAMINATION BY MR. NOLAN:

Q There was one question I wanted to ask Mr. Kernan, but perhaps he has answered it. I wonder if you would be good enough to look at the enumerated headings that you set forth with regard to what would be the conditions precedent to financing the project, and I think it is Number 1, Mr.



F. Kernan,
Cr. Ex. by Mr. Nolan

- 2845 -

Kernan, if you will look at that?

A That has to do with the. . .

Q With the 20 years?

A . . . satisfactory gas contract.

Q Yes. What did you say, please?

A Satisfactory 20-year contracts for the sale and purchase of gas, is that what you have in mind?

Q Yes?

A Starting initially at 10 or 11 cents as the case may be.

Q Yes?

A But in general depending on what the marketing gas will be, on a 70% load factor?

Q Yes.

A Together with satisfactory engineers' reports on 2 trillion feet of proven gas reserves back of such contracts and the dedication in a satisfactory fashion of such reserves to the contract.

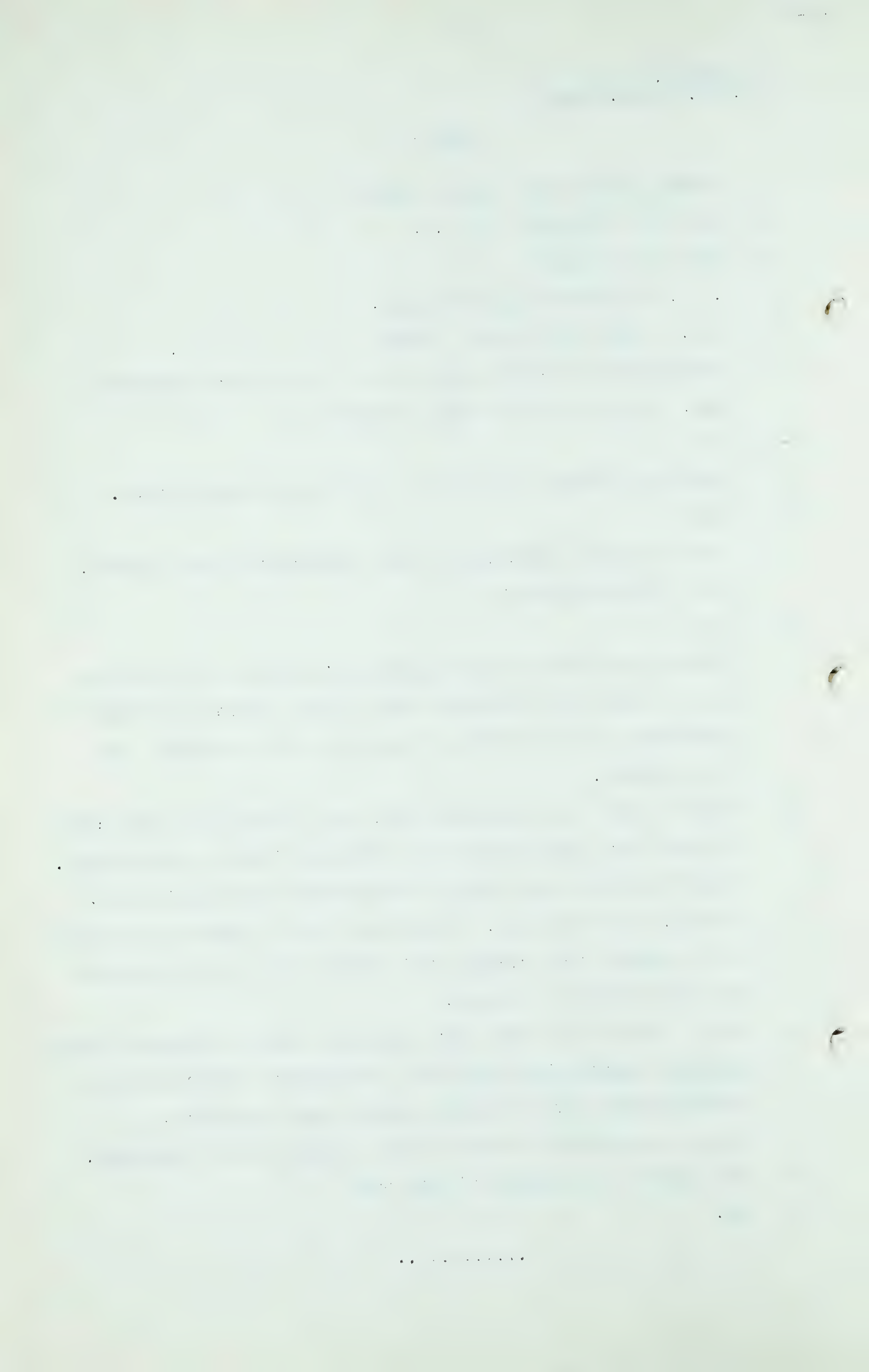
Q That is what I was interested in, and I think that takes care of what I was going to ask you. There is just one other point. There has been a good deal of exhortation this morning, Mr. Kernan, about treaties. Would you like to express any opinion as to whether your company will finance this project without the assistance of a treaty?

A Well, I would not think that a project could be financed without having a legal opinion that all Governmental authorities had satisfactorily given whatever permits were necessary. I have been advised by counsel that a treaty is not necessary.

Q And you have no opinion of your own?

A No.

.....



F. Kernan,
Cr.Ex. by Mr. Martland
Cr. Ex. by Mr. McDonald

- 2846 -

CROSS-EXAMINATION BY MR. MARTLAND:

Q Mr. Kernan, would you mind telling us that you contemplate that the bonds - I understood that it was to be financed 75% by bonds?

A Yes.

Q What will be the interest rate?

A Well, that will be told us by the insurance companies, but in the last analysis I would estimate 4 to 4½%.

Q What was the percentage of preferred shares?

A 10%.

Q And what dividend rate do you contemplate?

A It would depend on how you set it up, as to whether you had some common stock with it, but I would say in the neighbourhood of 5%, 5% plus.

Q Thank you.

.....

CROSS-EXAMINATION BY MR. McDONALD:

Q I have just one question. You were speaking of this proposal in Ontario, that would be financed entirely separately from the Western proposal?

A Yes, it would be.

Q There is no connection between the Eastern proposal and the Western?

A No.

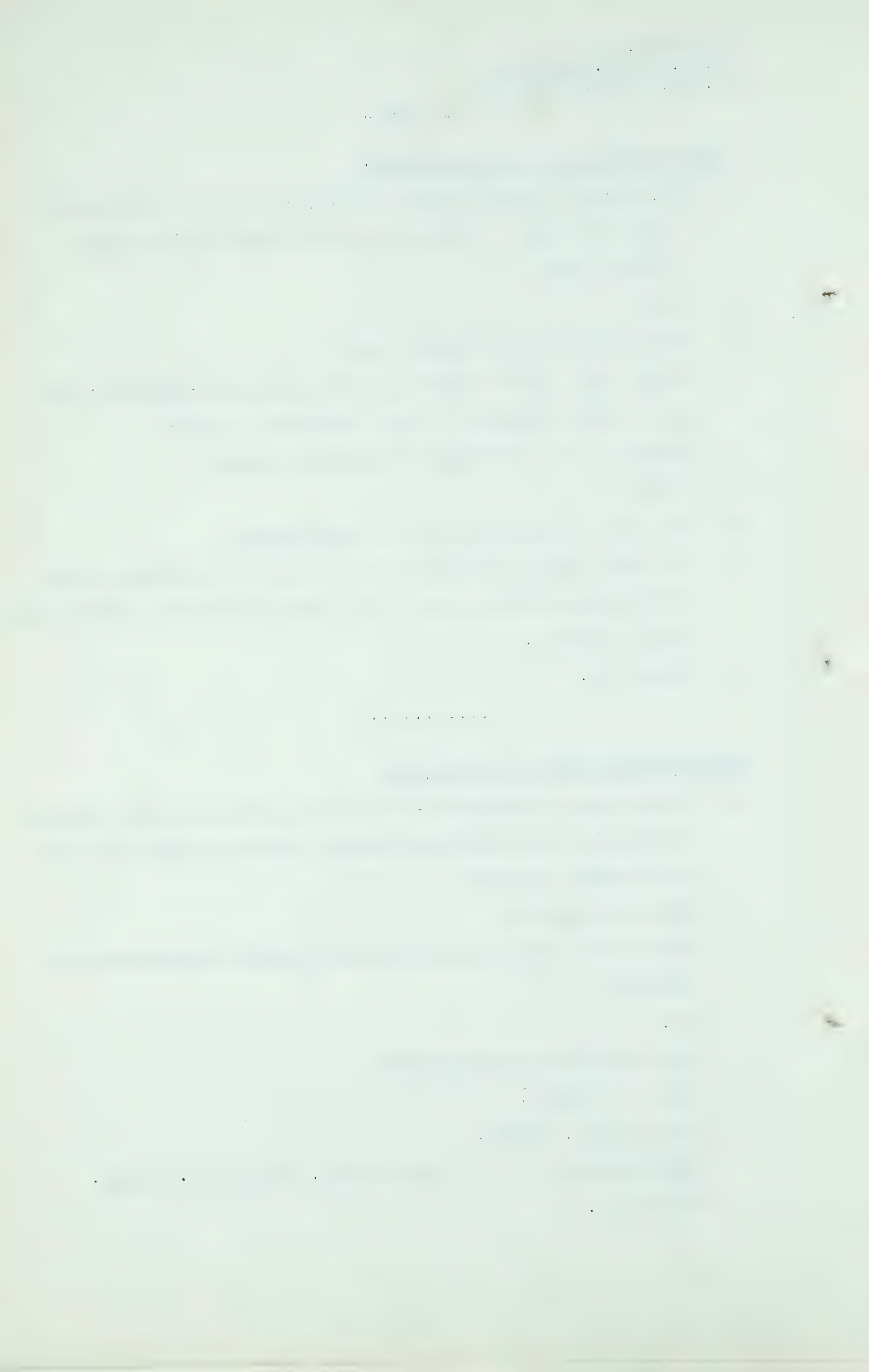
Q From the financial viewpoint?

A That is correct.

Q That is all, thanks.

THE CHAIRMAN: That is all, thanks, Mr. Kernan.

A Thank you.



- 2847 -

THE CHAIRMAN: Now, commencing tomorrow, the Board will sit from 9 to 12, and 2 to 4, and we will sit on Friday, if necessary, and possibly on Saturday.

MR. C. E. SMITH: Will you emphasize the 9, sir?

THE CHAIRMAN: 9 to 12 and 2 to 4. We will now adjourn until tomorrow morning at 9 o'clock.

(Hearing adjourned until 9.00 A.M., December 11th, 1951).

.....

THE CHAIRMAN: Now, commencing tomorrow, the Board will sit from 9 to 12, and 2 to 4, and we will sit on Friday, if necessary, and possibly on Saturday.

MR. C. E. SMITH: Will you emphasize the 9, sir?

THE CHAIRMAN: 9 to 12 and 2 to 4. We will now adjourn until tomorrow morning at 9 o'clock.

(Having adjourned until 9:00 A.M., December 11th, 1921.)

The Province of Alberta

PETROLEUM AND NATURAL GAS CONSERVATION BOARD

Application for Permission to Remove or cause to be removed
Natural Gas from the Province of Alberta, under the Provisions of the
Gas Resources Preservation Act by Prairie Pipe Lines Limited.

I. N. McKinnon Esq., Chairman

D. P. Goodall Esq.

Dr. G. W. Govier

Session:

Volume_____

